

No. 03-21-00428-CV

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

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AUSTIN, TEXAS
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Greg Abbott, in his Official Capacity as Governor of Texas; State of Texas;
and Ken Paxton, in his Official Capacity as Attorney General of Texas

Appellants

v.

La Joya Independent School District, Edinburg Consolidated Independent School District, Hidalgo Independent School District, Brownsville Independent School District, Crowley Independent School District, Edcouch-Elsa Independent School District, Lasara Independent School District, Pharr-San Juan-Alamo Independent School District, DeSoto Independent School District, Lancaster Independent School District, Ben Bolt-Palito Blanco Independent School District, Fort Worth Independent School District, El Paso Independent School District, Shanetra Miles-Fowler, Elias Ponvert, Kim Taylor, Austin Community College District, Houston Independent School District, Dallas Independent School District, Northside Independent School District, Austin Independent School District, Aldine Independent School District, Spring Independent School District.

Appellees

On Appeal from the
353rd Judicial District Court of Travis County, Texas
Cause No. D-1-GN-21-003897

**INTERVENOR SCHOOL DISTRICTS' EMERGENCY
MOTION FOR TEMPORARY ANTI-SUIT INJUNCTION**

Pursuant to Texas Rule of Appellate Procedure 29.3,
Appellees/Intervenor Plaintiffs Houston Independent School District
("Houston ISD"), Dallas Independent School District ("Dallas ISD"),

Northside Independent School District (“Northside ISD”), Austin Independent School District, (“Austin ISD”), Aldine Independent School District (“Aldine ISD”), and Spring Independent School District (“Spring ISD”) (collectively, the “Intervenor School Districts”) file this Motion for Temporary Anti-Suit Injunction against Appellants State of Texas, Greg Abbott, in his Official Capacity as Governor of Texas, and Ken Paxton, in his Official Capacity as the Attorney General of Texas, seeking to enjoin them (and their agents, servants, employees, designees, and officials acting in concert with them or on their behalf) from litigating against Texas independent school districts for alleged violations of GA-38’s prohibition on mask requirements, as follows:

OVERVIEW

The Intervenor School Districts require immediate protection from Appellants’ collateral attacks on this Court’s jurisdiction. The Attorney General, on behalf of the State of Texas, has recently filed multiple lawsuits against school districts with mask requirements, including Spring ISD (a party in the underlying proceedings) and two school districts in Travis County (which are covered by the temporary injunction at issue in this case). In doing so, the Appellants are: (1) acting contrary

to representations made in numerous lawsuits, including the underlying Travis County proceedings; (2) using satellite litigation to collaterally attack the trial court’s judgment (and this Court’s appellate jurisdiction); and (3) violating the stay on further legal proceedings by filing numerous lawsuits involving the same claims at issue in this appeal.

More specifically, in an effort to avoid judicial review of Governor Abbott’s unprecedented misuse of the Texas Disaster Act to usurp local governmental authority in violation of the Texas Constitution (and the Act itself), Appellants have represented to many different courts, on many different occasions, that only local district attorneys can enforce GA-38’s prohibition on mask requirements. [*See, e.g.*, Appendix (“App.”) 368–375.] They made these representations for the express purpose of arguing that courts should dismiss lawsuits challenging GA-38’s validity on jurisdictional grounds, including this one, because the plaintiffs faced “no credible threat” of prosecution by local district attorneys. [*Id.*; *see also* Clerk’s Record (“CR”) 303–304.]

Yet, within the last week or so, the Attorney General, on behalf of the State of Texas, has sued at least fifteen school districts for implementing mask requirements in response to the deadly surge of the

COVID-19 Delta variant (the “Attorney General Lawsuits”). [App.6–346.] The Attorney General has even sued Spring ISD, notwithstanding the fact that the trial court has already (1) determined that the school districts in this case are likely to prevail on the merits of their challenge to GA-38 and (2) issued a temporary injunction enjoining Governor Abbott (and his agents, servants, employees, designees, and officials acting in concert with him or on his behalf) from enforcing the portions of GA-38 related to face coverings. [App.1–5.] The temporary injunction applied to nineteen named school districts (including Spring ISD), along with “any school district located within Travis County.” [*Id.*] But the Attorney General presses on, suing parties to the underlying lawsuit (Spring ISD and Richardson ISD) as well as Round Rock ISD and Elgin ISD, school districts partially located in Travis County.¹ As detailed

¹ Although the trial court proceedings in this case have been stayed pending appeal, the Appellants’ recent litigation is clearly an improper collateral attack on this Court’s (and the trial court’s) jurisdiction, as well as a waiver of the automatic stay provided by Section 51.014(b) of the Texas Civil Practice and Remedies Code—particularly as the Attorney General’s litigation relates to Spring ISD and Richardson ISD, and any non-party school districts located in Travis County, such as Round Rock ISD and Elgin ISD. *See, e.g., In re Geomet Recycling LLC*, 578 S.W.3d 82, 87 n.1 (Tex. 2019) (noting that a mandatory stay, like most legal rights, can be waived); *Roccaforte v. Jefferson Cnty.*, 341 S.W.3d 919, 923 (Tex. 2011) (“We agree with those decisions that have held that a party may waive complaints about a trial court’s actions in violation of the stay imposed by section 51.014(b).”).

below, the Attorney General lawsuits have already resulted in inconsistent temporary restraining orders, and at least four temporary injunction hearings are currently scheduled (one on September 21, 2021, two on September 28, 2021, and one on October 6, 2021).

Like GA-38’s prohibitions on mask requirements, the Attorney General Lawsuits are not intended to help mitigate COVID-19’s immeasurable threat to Texans’ health or safety. They do not purport to mitigate the disaster or keep students or teachers safe. Instead, their stated purpose is to protect “individual autonomy,” notwithstanding the disastrous impact on public health that necessarily flows from allowing individuals to disregard health and safety measures as they personally see fit.² In arguing that “GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months” [see App.11, ¶ 26], the Attorney General fails to acknowledge that, not

² According to the Attorney General, prioritizing “individual autonomy” at the expense of the health and safety of millions of Texas students and teachers “falls comfortably” within the Governor’s authority under the Texas Disaster Act. But the Act only allows the Governor to issue executive orders “[u]nder this chapter,” *i.e.*, for the purpose of mitigating or responding to an emergency. See TEX. GOV’T CODE §§ 418.002, .012. As detailed in the intervening school districts’ petitions in intervention [see CR.428–533, 1145–1272], neither the Act nor the Texas Constitution gives the Governor blanket authority to impose his political agenda on local governmental entities at the expense of public health and safety.

only did the Governor himself mandate masks for the majority of the pandemic, he is *still* allowing mask mandates in certain settings, like jails.³ After all, in the Governor’s own words, masks are “one of the most important and effective tools for reducing the spread of COVID-19” [App.358], and requiring masks is “the least restrictive means” to prevent the spread of COVID-19 and avoid the imposition of more extreme measures [*id.*; *see also* App.363.]

Political pressures may change, but the proven efficacy of masks has not. [App.392–404.] GA-38 notably conflicts with current guidance from the Centers for Disease Control, which recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status. [App.376–391.]

As noted above, on August 27, 2021, the trial court granted a temporary injunction enjoining the enforcement of GA-38’s prohibition on mask requirements against various Texas school districts. The

³ The Attorney General Lawsuits also argue that GA-38 promotes “uniformity.” It is difficult to understand how that can be the case. First, allowing each individual to make critically important decisions on matters of *public health* hardly promotes uniformity. Second, GA-38 itself does not impose uniform rules. Apparently, it is permissible to protect inmates and corrections employees by requiring masks in jails, but the Attorney General will file lawsuits against any school districts that similarly attempt to protect the health and safety of their students and teachers.

temporary injunction was stayed pending appeal, but the Appellants' recent proliferation of litigation demonstrates that they desire to continue litigating the validity of GA-38's prohibition on mask requirements—without giving this Court an opportunity to rule on those very same issues.

Because this Court has dominant jurisdiction over the dispute concerning school districts' ability to implement and enforce mask requirements, and because the Attorney General's recent litigation against Texas school districts (1) threatens this Court's jurisdiction, (2) seeks to evade important public policies, (3) creates a multiplicity of suits, and (4) is harassing in light of the procedural posture of this lawsuit, the Court should enjoin the Appellants from filing lawsuits against Texas school districts for alleged violations of GA-38's provisions regarding face coverings.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On August 12, 2021, La Joya ISD, Edinburg Consolidated ISD, Hidalgo ISD, Brownsville ISD, Crowley ISD, and Edcouch-Elsa ISD filed the underlying lawsuit against Greg Abbott, in his official capacity as Governor of Texas, seeking declaratory and injunctive relief regarding

the enforceability of GA-38’s provisions prohibiting school districts from adopting mask requirements. [CR.4–30.] Plaintiffs amended their petition on August 13, 2021 to add Lasara ISD and Pharr-San Juan-Alamo ISD as plaintiffs. [CR.31–61.] They filed a second amended petition on August 18, 2021, adding DeSoto ISD, Lancaster ISD, Ben Bolt-Palito Blanco ISD, Fort Worth ISD, and El Paso ISD as plaintiffs. [CR.237–271.]

On August 13, 2021, Shanetra Miles-Fowler, Elias Ponvert, and Kim Taylor—parents of children who attend public schools in Travis County—intervened in the lawsuit as plaintiffs. [CR.62–95.]

On August 19, 2021, Houston ISD, Dallas ISD, Northside ISD, Austin ISD, Aldine ISD, and Spring ISD filed a Petition in Intervention, Request for Declaratory Judgment, and Request for Temporary and Permanent Injunction against Greg Abbott, in his Official Capacity as Governor of Texas, and also the State of Texas, the Office of the Governor, the Office of the Attorney General, and Ken Paxton, in his Official Capacity as the Attorney General of the State of Texas. [CR.428–533.] These intervening school districts filed an Amended Petition in Intervention on August 26, 2021, which, among other things, added

Richardson ISD and Galena Park ISD as intervenor plaintiffs. [CR.1145–1272.]⁴

On August 23, 2021, the Court convened a hearing on the plaintiffs’ and intervenor plaintiffs’ application for temporary injunction. Evidence closed the following day.

Governor Abbott presented no witnesses or exhibits during the temporary injunction hearing. He did, however, file a plea to the jurisdiction arguing, among other things, that the school districts lacked standing to challenge GA-38 because they supposedly had not alleged a “credible threat of prosecution by local district attorneys, who would be the ones enforcing GA-38.” [CR.303–304.] Governor Abbott further stated that he “is not the one enforcing his executive orders.” [CR.304.] Ken Paxton and the State of Texas joined in Governor Abbott’s plea, stating that “Governor Abbott’s previously filed Plea to the Jurisdiction as to the jurisdictional arguments raised in Defendant’s Plea **apply equally to them.**” [CR.1285 (emphasis added)].

⁴ To the extent necessary, the Intervenor School Districts expressly adopt and incorporate by reference the factual allegations, legal arguments and authorities, and evidence set forth in the original and amended petitions in intervention. [CR.428–533, 1145–1272.]

On August 27, 2021, the Court granted a temporary injunction in favor of the plaintiffs and intervenor plaintiffs that were parties to the case at the time of the temporary injunction hearing, and enjoined “Greg Abbott, in his official capacity and his agents, servants, representatives, employees, designees, and officials acting in concert with him or on his behalf” from “enforcing the portions of GA-38 related to face coverings” against the following school districts: La Joya ISD, Edinburg Consolidated ISD, Hidalgo ISD, Brownsville ISD, Crowley ISD, Edcouch-Elsa ISD, Lasara ISD, Pharr-San Juan-Alamo ISD, DeSoto ISD, Lancaster ISD, Ben Bolt-Palito Blanco ISD, Fort Worth ISD, El Paso ISD, Houston ISD, Dallas ISD, Northside ISD, Austin ISD, Aldine ISD, Spring ISD, and “any school district located within Travis County.” [App.1–5.]

Governor Abbott, Ken Paxton, and the State of Texas appealed the order denying their plea to the jurisdiction. Governor Abbott also appealed the temporary injunction order. [CR.1296–1307.] The temporary injunction was stayed pending resolution of this appeal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(b). However, because the Appellants are actively litigating the issues in this case (albeit in different forums), a stay is no longer warranted or necessary.

THE ATTORNEY GENERAL LAWSUITS

Since September 9, 2021, the Attorney General, on behalf of the State of Texas, has sued at least fifteen school districts with mask requirements, including Appellee Spring ISD [App.6–58], Richardson ISD (a party to the underlying lawsuit) [App.59–119], non-party Round Rock ISD (which is partially located in Travis County) [App.120–156], and non-party Elgin ISD (which is partially located in Travis County) [App.157–200.] Lawsuits have also been filed against non-parties Galveston ISD, Lufkin ISD, Diboll ISD, Sherman ISD, La Vega ISD, McGregor ISD, Midway ISD, Longview ISD, Paris ISD, and Honey Grove ISD. [App.201–346.] The school districts that have been sued by the Attorney General are collectively referred to as the “School District Defendants.”

The Attorney General Lawsuits involve the validity of GA-38 and the validity of school district mask requirements—the exact same claims at issue in the underlying lawsuit and this appeal. The Attorney General Lawsuits seek a declaration that each School District Defendant’s mask requirement is “invalid, unlawful, and constitutes an *ultra vires* act.” They also seek injunctive relief restraining the School District

Defendants’ from enforcing their mask requirements for as long as GA-38 (or some other future executive order prohibiting mask requirements) remains in effect.

The Attorney General has obtained some *ex parte* temporary restraining orders against certain School District Defendants. [See, e.g., App.347–351.]⁵ Meanwhile, other courts have denied the Attorney General’s *ex parte* requests for temporary restraining orders. [See, e.g., App.353–354.] And at least one court, following a hearing, has denied the Attorney General’s request for a temporary restraining order. [See App.355–356.] Accordingly, the Attorney General Lawsuits are already resulting in inconsistent rulings.

A temporary injunction hearing is currently scheduled in the Paris ISD lawsuit for September 21, 2021. [App.347–348.] Temporary injunction hearings are currently scheduled in both the Round Rock ISD and Galveston ISD lawsuits for September 28, 2021. [App.349–351, 355–

⁵ On September 14, 2021, the Attorney General obtained an *ex parte* temporary restraining order against Round Rock ISD. [App.347–351.] On September 17, 2021, Round Rock ISD filed a petition for writ of mandamus and emergency motion for stay with the Third Court of Appeals in Case No. 03-21-00472-CV, *In re Round Rock Independent School District et al.*. That same day, the Court stayed the temporary restraining order and ordered the State to respond to the petition for writ of mandamus by September 21, 2021. [App.352.]

356.] A temporary injunction hearing in the Elgin ISD lawsuit is currently scheduled for October 6, 2021. [App.353–354.] These temporary injunction hearings could result in further inconsistent rulings.

THE COURT SHOULD GRANT AN ANTI-SUIT INJUNCTION

The Intervenor School Districts incorporate by reference the preceding paragraphs as if fully set forth herein.

A. The Court has authority to protect its jurisdiction and the parties’ rights pending appeal.

Texas Rule of Appellate Procedure 29.3 provides:

When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties’ rights until disposition of the appeal and may require appropriate security.

TEX. R. APP. P. 29.3. This Rule “gives an appellate court great flexibility in preserving the status quo based on the unique facts and circumstances presented.” *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019); *see also In re Tex. Educ. Agency*, 619 S.W.3d 679, 686–87 (Tex. 2021) (“[T]he statutory stay imposed by Section 51.014(b) only applies to trial-court proceedings [and] d[oes] not prohibit the court of appeals from preserving the plaintiffs’ rights under Rule 29.3.”).

B. The court should enjoin the Attorney General Lawsuits and the Appellants from further litigation the claims at issue in this appeal.

“When a party files suit in a court of competent jurisdiction, that court is entitled to proceed to judgment and may protect its jurisdiction by enjoining the parties from proceeding in a suit subsequently filed in another court of this state.” *In re Henry*, 274 S.W.3d 185, 192 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (citing *Perry v. Del Rio*, 66 S.W.3d 239, 252 (Tex. 2001)); *see also Gannon v. Payne*, 706 S.W.2d 304, 305 (Tex. 1986) (“Texas state courts do have the power to restrain persons from proceeding with suits filed in other courts of this state.”); TEX. CIV. PRAC. & REM. CODE § 65.011(2) (“A writ of injunction may be granted if . . . a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation, in violation of the rights of the application, and the act would tend to render the judgment in that litigation ineffectual.”).

A court’s power to enjoin parties from going forward with litigation extends to lawsuits filed in other counties. The Texas Supreme Court addressed duplicative lawsuits filed in two separate Texas counties in *Perry*:

It is not unusual for parties with a choice of forums to prefer one over another, and when more than one party can sue on the same subject matter, they may choose different courts. **As a rule, when cases involving the same subject matter are brought in different courts, the court with the first-filed case has dominant jurisdiction and should proceed, and the other cases should be abated.** The obvious reasons for abatement . . . are the conservation of judicial resources, avoidance of delay, comity, convenience, and the necessity for orderly procedure in the trial of contested issues . . . The first-filed rule also has several justifications. The jurisprudential reason for the rule is that once a matter is before a court of competent jurisdiction, its action must necessarily be exclusive because it is impossible that two courts can, at the same time, possess the power to make a final determination of the same controversy between the same parties. A pragmatic justification for the first-filed rule is efficiency: proceedings earlier begun may be expected to be earlier concluded. A further justification is simple fairness: in a race to the courthouse, the winner's suit should have dominant jurisdiction.

Perry, 66 S.W.3d at 252 (internal citations and quotations omitted) (emphasis added). *See also In re Henry*, 274 S.W.3d at 193 (“While either Harris County or Brazoria County may have been a proper choice for the [plaintiffs] to file their lawsuit, once they filed suit in Brazoria County, Brazoria County acquired dominant jurisdiction. This dominant jurisdiction vests the Brazoria County Court with the power to protect its jurisdiction over the parties and the issues before it by enjoining [the

defendant] from proceeding to hearing on his motion for summary judgment in Harris County, or further prosecution of his lawsuit in Harris County.”).

A court’s power to enjoin subsequent litigation also exists even when the parties are not identical, provided that the suits are interrelated and the first suit could have been amended to bring in all necessary and proper parties. *Wyrick v. Business Bank of Texas, N.A.*, 577 S.W.3d 336, 357 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (“The subject matter of multiple lawsuits can inherently interrelate even when, as here, the parties to each proceedings are not identical.”); *see also* TEX. R. CIV. P. 39 (“A person who is subject to service of process shall be joined as a party in the action if (1) in the absence complete relief cannot be accorded among those already parties, or (2) they claim an interest relating to the subject of the action and are so situated that the disposition of the action in their absence may (i) as a practical matter impair or impede their ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest.”).

Further, as long as a court has personal jurisdiction over the persons or entities to be enjoined, an anti-suit injunction may address a party's conduct in any geographic region. *Cunningham v. State*, 353 S.W.2d 514, 516–17 (Tex. Civ. App.—Dallas 1962, writ ref'd n.r.e.); *see also Greenpeace, Inc. v. Exxon Mobil Corp.*, 133 S.W.3d 804 (Tex. App.—Dallas 2004, pet. denied) (“As far as suits for injunctive relief are concerned, it is well settled that an injunction acts in personam and not in rem . . . a court can enjoin activities of an individual wherever he or she may be found.”).

In *Gonzalez v. Reliant Energy, Inc.*, 159 S.W.3d 615 (Tex. 2005), the Texas Supreme Court explained that an anti-suit injunction is appropriate to: (1) address a threat to the court's jurisdiction, (2) prevent the evasion of important public policy, (3) prevent a multiplicity of suits, **or** (4) protect a party from vexatious or harassing litigation. *Id.* at 623 (emphasis added). The party seeking the injunction must show that “a clear equity demands” the injunction because of **one** of those four circumstances. *Id.* However, “[t]here are no precise guidelines for judging the propriety of an anti-suit injunction; the circumstances of each situation must be carefully examined to determine whether the

injunction is necessary to prevent an irreparable miscarriage of justice.” *AVCO Corp. v. Interstate Sw., Ltd.*, 145 S.W.3d 257, 262 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

Although the Intervenor School Districts only need to demonstrate *one* of these four circumstances to justify the issuance of an anti-suit injunction, all of them weigh in favor of enjoining the Attorney General Lawsuits.

1. An injunction is necessary to protect this Court’s jurisdiction.

The trial court has already determined that school districts, as opposed to the Appellants, are likely to prevail on the issue of whether Governor Abbott can prohibit public school districts from requiring masks. Appellants have appealed that decision, as is their right—but they do not have the right to launch collateral attacks on the trial court’s order (or this Court’s jurisdiction over the claims at issue in this appeal) by suing parties to this litigation (Spring ISD and Richardson ISD), or school districts that are partially located in Travis County (Round Rock ISD and Elgin ISD), or nearly a dozen other school districts in different jurisdictions over the same exact issue. *See Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985) (“[U]nless a judgment of general jurisdiction

is void, it is not subject to collateral attack in another court of equal jurisdiction.”); *London Market Insurers v. American Home Assur. Co.*, 95 S.W.3d 702, 706 (Tex. App.—Corpus Christi 2003, no pet.) (“Where jurisdiction is once lawfully and properly acquired, no subsequent fact or event in the particular case serves to defeat that jurisdiction.”) (internal citations and alterations omitted).

Because the underlying lawsuit was filed almost a month before the Attorney General Lawsuits, and the issues regarding GA-38’s validity are currently before this Court on appeal, this Court has dominant jurisdiction over the dispute regarding Governor Abbott’s ability to prohibit mask requirements in schools. The Attorney General Lawsuits are an impermissible collateral attack that threatens this Court’s dominant jurisdiction over the claims at issue in this case and should be enjoined.

2. An Injunction is necessary to prevent a multiplicity of suits and the evasion of important public policies.

As detailed above, the claims in this lawsuit relate to the validity of GA-38’s purported prohibition on mask requirements in Texas public schools. But now, instead of a single case that is likely to resolve the validity of GA-38 once and for all (and sooner than later, given that the

issues are already on appeal), there are numerous separate, but essentially identical, lawsuits all across the state.⁶ [App.6–346.] The sheer number of lawsuits alone all but guarantees inconsistent results in both the trial courts and intermediate courts of appeal (a far cry from the all-important “uniformity” that the Governor and Attorney General claim to be pursuing through GA-38 and the Attorney General Lawsuits), and will involve a tremendous waste of judicial time and resources.

As explained by the Texas Supreme Court, “[i]t has long been the policy of the courts and the legislature of this state to avoid a multiplicity of suits.” *Gonzalez*, 159 S.W.3d at 623. The Appellants’ decision to sue more than a dozen public school districts offends well-established public policy and should be enjoined.

3. An injunction is necessary to prevent harassing litigation.

Appellants’ decision to sue Spring ISD and Richardson ISD to enjoin the enforcement of their mask requirements—notwithstanding

⁶ A single parallel proceeding in another forum does not constitute a multiplicity of suits and cannot, by itself, justify the issuance of an anti-suit injunction. *See Golden Rule Ins. Co. v. Harper*, 925 S.W.2d 649, 651–52 (Tex. 1996). However, “the multiplicity argument supports issuance of an anti-suit injunction when a party files numerous lawsuits to relitigate issues in different courts.” *AVCO Corp.*, 145 S.W.3d at 266.

the fact that they are parties to the underlying lawsuit, and notwithstanding the fact that the trial court has already determined that the school districts are likely to prevail on the merits of Governor Abbott’s attempt to prohibit mask requirements in schools—is harassing. Appellants’ decision to file a multitude of new lawsuits instead of waiting for the same issues to be resolved by this Court on appeal is harassing. *See, e.g., Nguyen v. Intertex, Inc.*, 93 S.W.3d 288, 299 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (anti-suit injunction warranted where appellant filed at least five lawsuits relating to the same judgment); *Chandler v. Chandler*, 991 S.W.2d 367, 403 (Tex. App.—El Paso 1999, pet. denied) (anti-suit injunction warranted where appellant filed ten lawsuits attempting to relitigate matters that had been resolved against him); *In re Estate of Dilasky*, 972 S.W.2d 763, 767–68 (Tex. App.—Corpus Christi 1998, no pet.) (anti-suit injunction warranted where appellant filed at least seven lawsuits attempting to re-litigate same or similar issues); *In re Johnson*, 961 S.W.2d 478, 482 (Tex. App.—Corpus Christi 1997, no pet.) (anti-suit injunction warranted to protect the prevailing party from the continued issuance of temporary orders blocking enforcement of a judgment).

Because the Attorney General’s litigation strategy is harassing, particularly as to school districts that are parties to this case or otherwise covered by the trial court’s temporary injunction, the Court should enjoin Appellants’ from moving forward with the Attorney General Lawsuits.

C. The Intervenor School Districts are otherwise entitled to injunctive relief.

The purpose of temporary injunctive relief “is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The status quo is the “last actual, peaceable, non-contested status that preceded the controversy. *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). An applicant must plead and prove the following elements: “(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru*, 84 S.W.3d at 204.

To establish a probable right to the relief, the applicant must present evidence to sustain the pleaded cause of action. *EMS USA, Inc. v. Shary*, 309 S.W.3d 653, 657 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *Vaughn v. Intrepid Directional Drilling Specialists, Ltd.*, 288 S.W.3d 931, 936 (Tex. App.—Eastland 2009, no pet.).

“An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied). “[T]he legal issues before the trial court at a temporary injunction hearing are whether the applicant showed a probability of success and irreparable injury.” *Tom James of Dallas, Inc. v. Cobb*, 109 S.W.3d 877, 882 (Tex. App.—Dallas 2003, no pet.); *see also Brown*, 373 S.W.3d at 208.

The status quo prior to the filing of the Attorney General Lawsuits was that the underlying lawsuit—and the issues involved, *i.e.*, the validity of Governor Abbott’s attempts to prohibit mask requirements in public schools—was stayed pending appeal. But notwithstanding the stay of proceedings in the trial court, Appellants are now suing more than a dozen school districts all across the State—including Spring ISD and Richardson ISD, which are parties to the underlying litigation—regarding the same subject matters already at issue in this lawsuit (*i.e.*, the validity of GA-38’s prohibition on mask requirements in public schools). In other words, Appellants are attempting to use the automatic

stay as both a sword and shield and have thereby significantly altered the status quo.⁷

The Intervenor School Districts have already demonstrated that they are entitled to temporary injunctive relief with respect to their underlying claims for declaratory and injunctive relief regarding the validity of GA-38’s face covering provisions. [App.1–5.] Additionally, as detailed above, the Intervenor School Districts have demonstrated their

⁷ Notably, the claims asserted *against* Spring ISD and Richardson ISD in the Attorney General Lawsuits are compulsory counterclaims that must be brought in the underlying lawsuit. *See* TEX. R. CIV. P. 97(a) (“A pleading shall state as a counterclaim any claim within the jurisdiction of the court, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the same transaction or occurrence that is the subject matter of the opposing party’s claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction . . .”). With respect to the Attorney General Lawsuits that have been filed against non-party school districts—particularly those that are partially located in Travis County, like Round Rock ISD and Elgin ISD—the Appellants easily could have (and should have) joined those parties in this case in order to achieve the “uniformity” they claim is so important. Rule 39 mandates that a party *shall* be joined “if (1) in [its] absence complete relief cannot be accorded among those already parties, or (2) [it] claims an interest relating to the subject of the action and is so situated that the disposition of the action in [its] absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) **leave any of the persons already parties subject to a substantial risk of incurring** double, multiple, or otherwise **inconsistent obligations** by reason of [its] claimed interest.” TEX. R. CIV. P. 39. Here, the Attorney General’s decision to file multiple lawsuits regarding GA-38 does not just create a substantial risk of inconsistent obligations, it has already done so. [App.347–356.] Appellants should not be permitted to move forward on counterclaims against Spring ISD and Richardson ISD—and collateral litigation against other school districts involving identical claims and issues—in another jurisdiction (the “sword”) while the rest of the parties to the underlying lawsuit are purportedly precluded from seeking relief in light of the stay pending appeal (the “shield”).

entitlement to an anti-suit injunction under the relevant factors and considerations.

The harm inflicted by the Appellants' collateral attacks on this Court's jurisdiction is ongoing, imminent, and irreparable, and there is no adequate remedy at law. The trial court has already determined that public school districts are likely to prevail on their claims regarding the validity of Governor Abbott's attempts to prohibit mask requirements in public schools—and rather than allow this Court the opportunity to rule on the validity of the trial court's order, the Attorney General has filed numerous lawsuits across the State of Texas seeking declarations that school districts' mask requirements are unlawful, as well as injunctive relief enjoining the enforcement of such requirements. Appellants' knowing disregard for this Court's jurisdiction and their affirmative actions to file suit against Spring ISD and Richardson ISD (parties to this case), as well as Round Rock ISD and Elgin ISD (school districts in Travis County covered by the temporary injunction), are a direct threat to this Court's jurisdiction and the parties' claims in the underlying lawsuit.

Accordingly, the Intervenor School Districts seek a temporary injunction prohibiting the Appellants—and all of their agents, servants,

employees, designees, and officials acting in concert with them or on their behalf—from filing or prosecuting any lawsuit, injunction, or legal action that would threaten this Court’s jurisdiction, collaterally attack the trial court’s temporary injunction, subvert public policy, or require any public school district in Texas to participate in other litigation, including, but not limited to, the above-defined Attorney General Lawsuits.

CONCLUSION AND PRAYER FOR RELIEF

For these reasons, the Intervenor School Districts pray that this Court:

- A. Grant their application for an anti-suit injunction;
- B. Enter a temporary injunction prohibiting the State of Texas, Greg Abbott, in his Official Capacity as Governor of Texas, and Ken Paxton, in his Official Capacity as the Attorney General of Texas—and all of their agents, servants, employees, designees, and officials acting in concert with them or on their behalf—from filing or prosecuting any lawsuit, injunction, or legal action that would threaten this Court’s jurisdiction, collaterally attack the trial court’s temporary injunction, subvert public policy, or that otherwise seeks to enforce or determine the validity of GA-38’s mask provisions against Texas school districts, including, without limitation, the above-defined Attorney General Lawsuits;
- C. Enter a temporary injunction requiring that the State of Texas, Greg Abbott, in his Official Capacity as Governor of Texas, and Ken Paxton, in his Official Capacity as the Attorney General of Texas, nonsuit without prejudice (or, in the alternative, agree to stay) any pending lawsuit, injunction, or legal action that would threaten this Court’s

jurisdiction, collaterally attack the trial court's temporary injunction, subvert public policy, or that otherwise seeks to enforce or determine the validity of GA-38's mask provisions against Texas school districts, including, without limitation, the above-defined Attorney General Lawsuits;

- D. Award the Intervenor School Districts all such other and further relief, both general and special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

/s/ J. David Thompson

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CERTIFICATE OF CONFERENCE

On September 21, 2021, counsel for the Intervenor School Districts conferred with counsel for all parties regarding the relief sought in this motion. Appellants are opposed. All other parties are not opposed.

/s/ J. David Thompson

J. David Thompson

CERTIFICATE OF SERVICE

The undersigned certifies that on September 21, 2021, a true and correct copy of this document has been served upon all parties in accordance with the Texas Rules of Civil Procedure via the Court's electronic filing service:

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/s/ J. David Thompson

J. David Thompson

No. 03-21-00428-CV

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

Greg Abbott, in his Official Capacity as Governor of Texas; State of Texas;
and Ken Paxton, in his Official Capacity as Attorney General of Texas

Appellants

v.

La Joya Independent School District, Edinburg Consolidated Independent
School District, Hidalgo Independent School District, Brownsville
Independent School District, Crowley Independent School District, Edcouch-
Elsa Independent School District, Lasara Independent School District, Pharr-
San Juan-Alamo Independent School District, DeSoto Independent School
District, Lancaster Independent School District, Ben Bolt-Palito Blanco
Independent School District, Fort Worth Independent School District, El Paso
Independent School District, Shanetra Miles-Fowler, Elias Ponvert, Kim
Taylor, Austin Community College District, Houston Independent School
District, Dallas Independent School District, Northside Independent School
District, Austin Independent School District, Aldine Independent School
District, Spring Independent School District.

Appellees

On Appeal from the
353rd Judicial District Court of Travis County, Texas
Cause No. D-1-GN-21-003897

**APPENDIX TO INTERVENOR SCHOOL DISTRICTS'
MOTION FOR TEMPORARY ANTI-SUIT INJUNCTION**

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CAUSE NO. D-1-GN-21-003897

**La Joya ISD, Edinburg CISD, Hidalgo ISD,
Brownsville ISD, Crowley ISD, Edcouch-Elsa ISD,
Lasara ISD, Pharr-San Juan-Alamo ISD,
DeSoto ISD, Lancaster ISD, Ben Bolt-Palito
Blanco ISD, Fort Worth ISD, and El Paso ISD,
Plaintiffs**

**Shanetra Miles-Fowler, Elias Ponvert, and Kim
Taylor,
Intervenor-Plaintiffs**

**Austin Community College District,
Intervenor-Plaintiffs**

**Houston ISD, Dallas ISD, Northside ISD,
Austin ISD, Aldine ISD, Spring ISD ,
Intervenor-Plaintiffs**

v.

Greg Abbott, in his official capacity as Governor of
Texas,
Defendant

**State of Texas, Office of the Texas Governor,
Office of the Attorney General, Ken Paxton, in his
Official Capacity as the Attorney General of Texas
Intervenor-Defendants**

IN THE DISTRICT COURT

353RD JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

ORDER GRANTING TEMPORARY INJUNCTION

Having heard the applications of Plaintiffs La Joya ISD, Edinburg CISD, Hidalgo ISD, Brownsville ISD, Crowley ISD, Edcouch-Elsa ISD, Lasara ISD, Pharr-San Juan-Alamo ISD, DeSoto ISD, Lancaster ISD, Ben Bolt-Palito Blanco ISD, Fort Worth ISD, and El Paso ISD and Intervenor-Plaintiffs Shanetra Miles-Fowler, Elias Ponvert, Kim Taylor, Austin Community College District, Houston ISD, Dallas ISD, Northside ISD, Austin ISD, Aldine ISD, and Spring ISD for a temporary injunction prohibiting Governor Abbott and his officers, agents, servants, employees, and attorneys from enforcing the portions of GA-38 related to face coverings against Plaintiffs, Intervenor-Plaintiffs, and any school district located within Travis County until further order of this Court or until this Court issues a final judgment in the above-styled and numbered action, whichever event occurs first, the Court finds the applications have merit and should be granted.

1. Plaintiffs and Intervenor-Plaintiffs appeared through counsel and announced ready for a hearing on their applications for temporary injunction. Defendant Greg Abbott appeared through counsel and announced ready on the Plaintiffs' and Intervenor-Plaintiffs' applications for temporary injunction.

2. The Court considered the admitted exhibits and witness testimony presented by the parties at this hearing, along with all written and oral arguments submitted by the parties and counsel. The Court is of the opinion that the Plaintiffs and Intervenor-Plaintiffs have met their burden to show their probable right of recovery on their claims against Governor Abbott, in his official capacity, asserting that Defendant's conduct and/or threatened conduct is without legal authority, is *ultra vires*, and violates the Texas Constitution. Plaintiffs and Intervenor-Plaintiffs have shown a probable right to relief on the merits of their claims.

3. The Court finds that Plaintiffs and Intervenor-Plaintiffs have made a sufficient showing of a probable right to recovery on their contention that under a proper construction of the applicable provisions of the Texas Constitution, the Texas Disaster Act, and the Texas Education Code that Defendant Governor Abbott, in his official capacity is not authorized to declare by executive fiat that school districts are prohibited from requiring individuals to wear face coverings.

4. The Court finds that Plaintiff has made a sufficient showing that the above-discussed conduct is unlawful, *ultra vires* conduct that violates the Texas Constitution and would cause irreparable harm to Plaintiffs, Intervenor-Plaintiffs, and the students, staff, and communities of Plaintiffs and Intervenor-Plaintiffs.

5. The Court finds that Plaintiffs and Intervenor-Plaintiffs will have no adequate remedy at law unless Defendant Greg Abbott is temporarily enjoined from enforcing the portion of GA-38 that prohibits school districts from requiring individuals to wear face coverings pending further order of this court or final trial on the merits of this suit, whichever event should first occur.

6. The Court finds that the issuance of a temporary injunction will maintain the status quo between the parties during the pendency of such order. The Court finds that during the 2020–2021 school year Texas school districts were permitted to require individuals to wear face coverings.

7. The Court finds that the balance of potential, irreparable harm to Plaintiffs and Intervenor-Plaintiffs and their students, staff, and local communities that would be caused by a denial of the requested temporary injunction, outweighs the potential harm, if any, to Defendant and that the public interest is served by granting this temporary injunction. Absent this order, the school districts and community college district will be unable to adopt a face covering requirement to control the spread of the COVID-19 virus, which threatens to overwhelm public schools and

could result in more extreme measures such as the school closures that have already begun in several Texas school districts.

8. The Court finds that Plaintiffs and Intervenor-Plaintiffs seek only declaratory and prospective injunctive relief against Defendant based on the allegations that Defendant's actions and proposed actions are without legal authority and are *ultra vires* and violate the Texas Constitution.

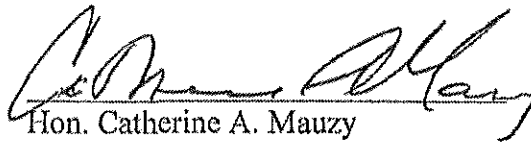
9. The Court finds that the amounts previously deposited with the Travis County District Clerk, constitute sufficient security, in lieu of bond, for any foreseeable harm or compensable damages that could result from the granting of this Temporary Injunction until further order of this Court or final judgment on the merits. This Temporary Injunction shall become effective immediately.

10. **IT IS THEREFORE ORDERED** that Defendant Greg Abbott, in his official capacity and his agents, servants, representatives, employees, designees, and officials acting in concert with him or on his behalf, are prohibited from enforcing the portions of GA-38 related to face coverings against Plaintiffs, Intervenor-Plaintiffs, and any school district located within Travis County until further order of this Court or until this Court issues a final judgment in the above-styled and numbered action, whichever event occurs first.

11. **IT IS FURTHER ORDERED** that trial on the merits of this case is set for January 18, 2022, at 9:00 o'clock a.m. in Travis County, Texas.

12. **IT IS FURTHER ORDERED** that the clerk of this Court shall forthwith, issue this Order Granting Temporary Injunction and Writ of Temporary Injunction in conformity with the law and the terms of this Order.

Signed and Entered on this the 27th day of August, 2021 at 3:15 P.M., in
Travis County, Texas.


Hon. Catherine A. Mauzy
District Judge Presiding

Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Spring ISD’s mask mandate should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

6. Defendant Spring Independent School District (“Spring ISD”) has approximately 35,284 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Spring ISD is the board of trustees for Spring ISD.

8. Defendant Dr. Rodney Watson is the superintendent of Spring ISD.

² *Id.* § 418.011.

9. Defendants Dr. Deborah Jensen, Kelly P. Hodges, Justine Durant, Winford Adams, Rhonda Newhouse, Carmen Correra, and Natasha McDaniel are members of the Spring ISD Board of Trustees.

10. Defendants may be served with process through Rhonda Newhouse, the president of the Spring ISD Board of Trustees, or through Dr. Rodney Watson, the Spring ISD superintendent.

JURISDICTION AND VENUE

11. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

12. Venue is proper in Harris County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State's Emergency Response.

13. Two core purposes of the Texas Disaster Act of 1975 ("TDA") are to: (1) mitigate the "damage, injury, and loss of life and property" resulting from a disaster; and (2) "provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters."³

³ Tex. Gov't Code § 418.002(1), (3).

14. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

15. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

16. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

17. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

¹⁴ *Id.* § 418.108(g).

a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

18. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

19. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

20. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

21. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

22. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure.”²⁰

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ Ex. A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at 1.

²⁰ *Id.* at 2–3.

23. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

24. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

25. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

26. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

27. GA-38’s prohibition on local officials’ facemask mandates falls comfortably within Governor Abbott’s broad power to “control ingress and egress to

²¹ *Id.* at 3

²² *Id.* at 3–4.

²³ *Id.* at 4.

²⁴ *Id.* at 3–4.

²⁵ *Id.* at 3–5.

²⁶ *Id.* at 4.

²⁷ *Id.* at 1.

²⁸ *Id.* at 3.

and from a disaster area and the movement of persons and occupancy of premises in the area.”²⁹

28. Specifically, GA-38’s ban on facemask mandates controls “ingress and egress” to, “movement” in, and “occupancy of” a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when “occupying” premises in a disaster area.

III. Spring ISD Issues a Facemask Mandate in Defiance of GA-38.

29. On or about August 10, 2021, Spring ISD’s Superintendent Dr Rodney Watson announced a mask mandate for all students, staff, and visitors inside any Spring ISD facilities regardless of vaccination status (“Spring ISD August 10, 2021 Meeting Minutes”).^{30, 31}

30. Defendant Watson gave an interview explaining his flawed reasoning for defying GA-38 is stated as follows:

One of our core values in Spring ISD is we will do whatever we can do to ensure the safety of our students and our staff.

I don’t want to focus so much on defying the governor. We are ensuring that our kids are safe. We’re ensuring that our teachers are safe. And we’re ensuring the learning needs for each student is met.³²

²⁹ Tex. Gov’t Code § 418.018(c).

³⁰ Exhibit E, Spring Independent School District Board of Trustees Regular Meeting Minutes Tuesday August 10, 2021.

³¹ Latest District and/or Superintendent Covid Update, August 19, 2021; <https://www.springisd.org/Page/7066> (last visited September 9, 2021).

³² Exhibit F, Cory McCord, *Spring ISD implements mask mandate to ‘ensure the safety of our students and staff’*, KHOU, (August 10, 2021), available at <https://www.khou.com/article/news/health/coronavirus/spring-isd-mask-mandate/285-3dd9765f-974c-4a0f-98c4-49d145cc7f8b>.

31. In fact, Defendants' Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

32. On August 17, 2021, the Office of Attorney General sent a letter to Spring ISD Superintendent Watson, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter stated in light of the Texas Supreme Court's rulings, the Office of the Attorney General requests that: "you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office."³³

33. Dr. Watson quickly responded with a letter on a statement on August 18, 2021, stating clearly that he will not rescind the mask mandate. In light of the Temporary Restraining Order issued in *The Southern Center for Child Advocacy v. Gregg Abbott*, Spring ISD believes "GA-38's prohibition on mandating face coverings is no longer enforceable against it."³⁴ Further, "Spring ISD is not violating any court order that applies to it. . ."³⁵

34. As of September 13, 2021, Spring ISD and Superintendent Watson have not rescinded the mandatory masking policy in response to the letter from Attorney

³³ Exhibit G, Office of the Attorney General Letter to Spring ISD Superintendent Rodney Watson, August 17, 2021.

³⁴ Exhibit H, Spring ISD Superintendent Rodey Watson Letter to Attorney General Paxton, August 18, 2021.

³⁵ *Id.*

General Paxton’s office, and furthermore, they have indicated their intent to continue defying GA-38.

CLAIMS FOR RELIEF

35. Pursuant to Texas’s Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

36. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts’ general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts’ general authority and GA-38’s specific prohibition, GA-38’s specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants’ Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION

37. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.³⁶ “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”³⁷ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.³⁸ These requirements are readily met here.

³⁶ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

³⁷ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

³⁸ *Id.*

I. The State will Likely Succeed on the Merits.

38. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants’ Facemask Order and (2) Governor Abbott lawfully suspended Defendants’ statutory authority to issue their Facemask Order.

A. GA-38 Expressly Preempts Defendants’ Facemask Order.

39. The point is simple. Governor Abbott’s emergency orders carry the force and effect of law.³⁹ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively “state laws.” Traditional preemption principles dictate that when a state law conflicts with a local law, the state law controls.⁴⁰

40. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.⁴¹ Defendants’ Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by, GA-38. As such, Defendants’ Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

41. A review of the Legislature’s intent, which is a focus of a preemption analysis,⁴² supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board

³⁹ Tex. Gov’t Code § 418.012.

⁴⁰ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

⁴¹ Ex. A at ¶¶ 3–5.

⁴² *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

42. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴³ (2) that explicitly carry the force and effect of *state* laws.⁴⁴ Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁴⁵ Further, the Governor is the only one with the emergency powers to suspend laws;⁴⁶ use all available public resources, including resources of cities and counties;⁴⁷ and control the movement of persons and occupancy of premises on a statewide level.⁴⁸ The Legislature’s intent is clear. In the event of a conflict, Governor Abbott’s emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

43. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁴⁹ But here harmonization *is* possible: school districts’ general authority is not abolished, but merely circumscribed, by GA-38’s prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁵⁰ so too does that general authority not exempt a school district from

⁴³ See Tex. Gov’t Code §§ 418.014–.015.

⁴⁴ *Id.* § 418.012.

⁴⁵ *Id.* § 418.011.

⁴⁶ *Id.* § 418.016(a).

⁴⁷ *Id.* § 418.017.

⁴⁸ *Id.* § 418.018.

⁴⁹ See, e.g., Tex. Gov’t Code § 311.026.

⁵⁰ See *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

complying with GA-38. GA-38's ban on mask mandates functions as a particular limit on school districts' general authority.

44. The TDA reflects the Legislature's comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁵¹ In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

45. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.⁵² And if the Governor's orders under the TDA could not preempt school district rules, then county judges' and city mayors' orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State's response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA and it is not the law.

⁵¹ *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) (“Nobody can question that the public schools of this state ‘are quasi public entities and are subject to direct statutory control’ by the Legislature.”).

⁵² See Tex. Gov't Code § 418.108.

46. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

47. Governor Abbott, using his TDA-granted power,⁵³ suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵⁴ Under the circumstances, Defendants had no authority to issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

48. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁵⁵ The court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means of rules and regulations.”⁵⁶ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁵⁷

49. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁵⁸ The

⁵³ TEX. GOV’T CODE § 418.016(a).

⁵⁴ Ex. A at ¶ 5.

⁵⁵ 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

⁵⁶ *Id.* at 824 (citing various dictionaries).

⁵⁷ *Id.*

⁵⁸ *Id.*

court reasoned that, “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁵⁹ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁶⁰ The El Paso Court of Appeals’ reasoning applies equally here.

50. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

51. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

II. The State will be Irreparably Injured Absent an Injunction.

52. The State’s injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁶¹

53. There, the Court explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”⁶² The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s

⁵⁹ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁶⁰ *Id.*

⁶¹ 620 S.W.3d 400, 410 (Tex. 2020).

⁶² *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

control over local officials who are misapplying or defying State laws.⁶³ The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”⁶⁴

54. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”⁶⁵ The Court found that, “[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”⁶⁶

55. Per *Hollins*, the irreparable injury requirement favors the State.

56. The El Paso Court of Appeals rightly viewed *Hollins* “as controlling” on the irreparable injury issue.⁶⁷

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

57. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁶⁸ There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *El Paso County*, 618 S.W.3d at 826.

⁶⁸ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

58. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials' attempt to usurp the Governor's power to control the direction of the State's response to the COVID-19 pandemic. The status quo favors the State.

59. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38's ban on facemask mandates.⁶⁹ Each time, the Court overturned these injunctions because they altered the status quo.⁷⁰

60. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁷¹ The Court explained that these facemask cases turn on a pure legal question: "[W]hich government officials have the legal authority to decide what the government's position on [facemasks] will be."⁷² The Court continued: "The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels."⁷³ The Court held that the status quo of "gubernatorial oversight" of disaster-related decisions "should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought."⁷⁴

⁶⁹ See Exhibits B–C.

⁷⁰ *Id.*

⁷¹ Exhibit D.

⁷² *Id.* at ¶ 2.

⁷³ *Id.*

⁷⁴ *Id.*

61. Texas Supreme Court precedent requires that this Court enjoin Defendants' Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

62. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

63. For the reasons discussed above, the State respectfully prays that this Court:

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants' Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State's application for a temporary injunction;
- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and

H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief, General Litigation Division

/s/ Halie Elizabeth Daniels

HALIE E. DANIELS

Texas Bar No. 24100169

TODD DICKERSON

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Assistant Attorney General

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Christopher.Hilton@oag.texas.gov

ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

V.

SPRING INDEPENDENT SCHOOL DISTRICT, BOARD OF TRUSTEES OF SPRING INDEPENDENT SCHOOL DISTRICT, DR. RODNEY WATSON in his official capacity as superintendent of the Spring Independent School District, and DR. DEBORAH JENSEN, KELLY P. HODGES, JUSTINE DURANT, WINFORD ADAMS, RHONDA NEWHOUSE, CARMEN CORRERA, and NATASHA MCDANIEL, in their official capacities as trustees of the Spring Independent School District,

Defendants.

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**DECLARATION OF HALIE DANIELS IN SUPPORT OF THE STATE OF TEXAS'S
VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Halie E. Daniels, my date of birth is January 5, 1989, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency

orders in question and other publicly available materials which this Court will be able to take judicial notice of.

Executed in Travis County, State of Texas, on the 13th day of September 2021.

/s/ Halie Elizabeth Daniels

Declarant



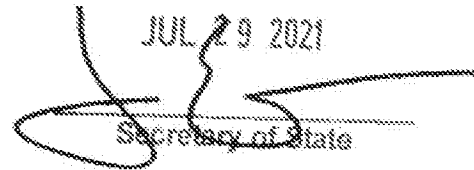
GOVERNOR GREG ABBOTT

July 29, 2021

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SECRETARY OF STATE
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JUL 29 2021

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701


Secretary of State

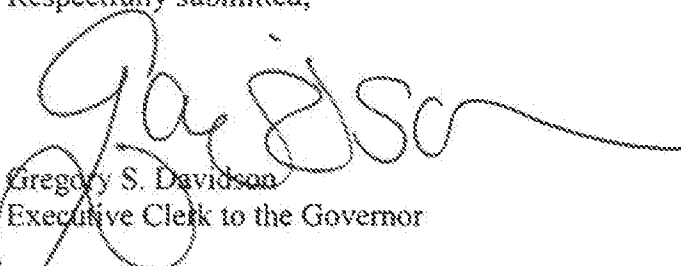
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

EXECUTIVE ORDER
GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

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SECRETARY OF STATE
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JUL 29 2021

punishable by a fine up to \$1,000, any failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;”

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called “vaccine passports,” the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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SECRETARY OF STATE
3:15 PM O'CLOCK

JUL 29 2021

- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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SECRETARY OF STATE
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JUL 29 2021

- a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; provided, however, that:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
- b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:

- i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
- ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
- iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
- iv. Chapter 54 of the Texas Local Government Code; and
- v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.

5. To further ensure uniformity statewide:

- a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

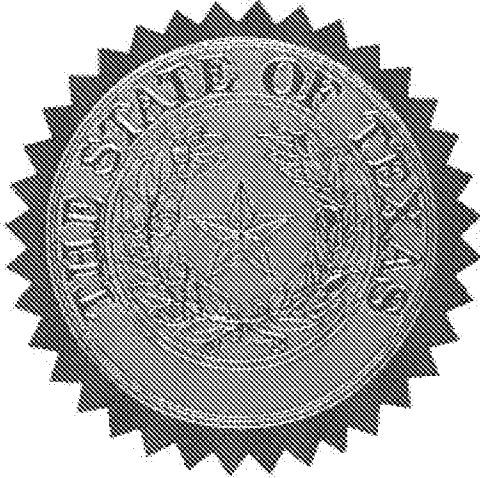
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JUL 29 2021

Appendix 030

executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in cursive script, reading "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in cursive script, reading "Joe A. Esparza".
JOE A. ESPARZA
Deputy Secretary of State

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SECRETARY OF STATE
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JUL 29 2021

IN THE SUPREME COURT OF TEXAS

No. 21-0687

**IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS**

ON PETITION FOR WRIT OF MANDAMUS

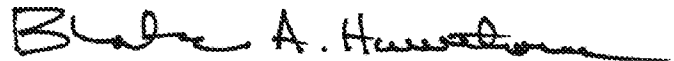
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF TEXAS

No. 21-0686

**IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS**

ON PETITION FOR WRIT OF MANDAMUS

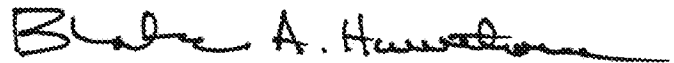
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF TEXAS

No. 21-0720

**IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS**

ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

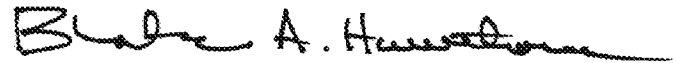
1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.

EXHIBIT D

Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

Spring Independent School District
Board of Trustees Regular Meeting Minutes

Tuesday, August 10, 2021 at 6:00 PM

1. Call to Order (6:11 PM)

President Rhonda Newhouse called the Regular Meeting of the Spring Independent School District Board of Trustees to order at 6:11 PM on August 10, 2021, in the Randall Reed Center, 23802 Cypresswood Drive, Spring, Texas, in accordance with Chapter 551 of the Texas Government Code.

Members Present:

Rhonda Newhouse, President
Winford Adams, Jr., Vice President
Kelly P. Hodges, Secretary
Justine Durant, Assistant Secretary
Dr. Deborah Jensen
Jana Gonzales (left the meeting at 6:19 PM)
Carmen Correa (joined meeting at 6:19 PM)
Natasha McDaniel (joined meeting at 6:19 PM)

Members Absent:

Dr. Donald R. Davis

Others Present:

Rodney Watson, Superintendent of Schools
Mark Miranda, Executive Chief of District Operations
Ken Culbreath, Chief of Police
Julie Hill, Chief of Human Resources and Human Capital Accountability
Lupita Hinojosa, Chief of Innovation and Equity
Ann Westbrook, Chief Financial Officer
Sylvia Wood, Chief Communications Officer
Jeremy Binkley, General Counsel

2. Flag Pledges (6:13 PM)

The Presentation of the Colors was led by Board President Rhonda Newhouse.

3. Moment of Silence (6:14 PM)

President Newhouse asked the audience to join in a moment of silence.

4. Public Agenda Participation (6:15 PM)

Members of the public did not register to speak to the Board.

5. Board of Trustees (6:16 PM)

5.1. Appointment of Applicant to Trustee Position 6 Vacancy (6:16 PM)

The Board discussed appointing an applicant to fill the trustee vacancy for Position 6.

Trustee Hodges moved that the Board of Trustees appoint Carmen Correa to fill the trustee vacancy for Position 6. Trustee Durant seconded the motion and the motion carried unanimously.

5.2. Appointment of Applicant to Trustee Position 7 Vacancy (6:18 PM)

The Board discussed appointing an applicant to fill the trustee vacancy for Position 7.

Trustee Adams moved that the Board of Trustees appoint Natasha McDaniel to fill the trustee vacancy for Position 7. Trustee Jensen seconded the motion and the motion carried with 5 in favor and 1 abstention. Trustee Gonzales abstained as she is the current Position 7 trustee and is not eligible to vote for her replacement.

5.3. Swearing in Ceremony for Trustees Appointed August 10, 2021 (6:19 PM)

General Counsel Jeremy Binkley performed the Swearing in Ceremony for Position 6 – Carmen Correa and Position 7 – Natasha McDaniel.

6. Closed Session (6:24 PM)

President Newhouse recessed the open session at 6:24 PM for the purpose of entering into closed session pursuant to the following provisions of the Texas Open Meetings Act:

6.1. Under Section 551.071 - For the purpose of a private consultation with the Board's attorney on any or all subjects

or matters authorized, including any item posted on this agenda

- 6.2. Under Section 551.072 - For the purpose of discussing the purchase, exchange, lease, or value of real property
- 6.3. Under Section 551.074 - For the purpose of considering the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against a public officer or employee
The Board will deliberate regarding the Superintendent's evaluation and goals
The Board will deliberate on employees nominated for special recognition
The Board will deliberate on a recommendation for the termination and finding of no good cause for an employee's abandonment of contract
The Board will deliberate on the issuance of school district teaching permits for noncore career and technology courses
The Board will deliberate on employee resignations, recommendations to withdraw prior actions taken, recommendations to void employee contracts, recommendations for the proposed termination of employees on probationary and/or term contracts, and final orders for employees on term and probationary contracts previously proposed for termination and/or nonrenewal
The Board will deliberate on Applications for Appointment to fill vacancies for Trustee Positions 6 and 7
- 6.4. Under Section 551.076 - To consider the deployment, or specific occasions for implementation, of security personnel or devices
The Board will receive an update on cybersecurity protocols and safeguards

7. Actions on Closed Session Items (7:47 PM)

President Newhouse reconvened the open meeting at 7:47 PM. The Board took no action.

8. Opening Remarks (7:48 PM)

8.1. Superintendent of Schools (7:48 PM)

Superintendent Dr. Rodney Watson began his remarks by sharing details about the Class of 2021 Summer Graduation ceremony on Saturday, August 7, in which more than 80 seniors received their diplomas. The ceremony was held in the Dekaney High School auditorium for students from Spring High School, Westfield High School, Dekaney High School, and Spring Early College Academy.

“We're extremely proud of our students,” Watson said. “As we know, it was a very challenging time with Covid. They are definitely pursuing their goals to be more college and career ready, and so we're really excited for them, and we know they're going to be ready to tackle the next experience.”

Dr. Watson went on to note that with school beginning on Wednesday, August 11, for the vast majority of the district, he was excited to embark on a daylong tour of the district, beginning with an early morning at the Transportation Center to visit with bus drivers who, “are the first staff our students see, so we are going to go out tomorrow and wish them well.”

He said he was especially pleased to have all students learning in person on campuses this year, and shared some of the new things being unveiled in Spring ISD this year, including ZPass – a bus tracking system that allows parents to track their students in real time. He said the district also was launching even more options for students – from the new P-TECH program at Dekaney High School, where students will be able to earn associate degrees, to the new School for International Studies at Bammel. He also said all students will be offered free breakfast and lunch this year.

“More than anything, we're going to be super focused on ensuring that our students are growing academically,” Watson said, noting that he and the board would later be providing an update on the district’s new strategic plan.

Dr. Watson continued with an update on safety protocols for the new school year, acknowledging questions and concerns that have been received from parents and constituents about the health and safety of students, especially in light of the pandemic.

He went on to explain that based on the current data, the district will be making some adjustments to protocols –

including the mandating of masks for all students and staff inside any Spring ISD facility starting on Monday, Aug. 16. Additionally, he said, contact tracing measures in place last school year will continue as well as general notifications regarding positive cases. He also highlighted the district's COVID tracker for positive cases, which will be updated daily and available via the district's website.

"We're incredibly focused on creating the safest possible environment for our students and our staff and we've been constantly monitoring what's happening across the state in our area in regards to COVID-19. As we said last year, we pledged from the beginning that we will be flexible and ready to pivot on the latest guidance and recommendations."

As another measure, Watson said the district is looking at ways to expand its virtual learning program to include more students beyond those seeking alternative ways to earn credits in high school.

"As everyone knows, the state is not funding a full-time remote learning option, so our expanded virtual academy will not be able to accommodate every student who wants it," Watson said. "However, we're looking at ways to increase the number of students served to include more grade levels and to prioritize those students with documented medical needs."

He concluded his remarks by noting that the district's homebound program will continue for students too medically fragile to be in a school setting, and the administration anticipates that more students will need to be served – so Spring ISD will be finalizing its application admissions criteria for expanded virtual learning. And the district will be sending out communications to families to provide further information.

8.2. Board of Trustees (7:53 PM)

President Newhouse invited the Trustees to make remarks.

Trustee Adams remarked on his own personal back-to-school experience as the parent of a Dekaney High School freshman, a member of the first full class of students to begin their studies in the Dekaney Ninth-Grade Center, which first opened its doors in the fall of 2020 during the pandemic.

“So, I had the opportunity last night to attend the freshman orientation at Dekaney – my son will be attending there – and the turnout was phenomenal,” Adams said. “I think they're really well prepared to receive their inaugural class in that building, and so I wanted to extend my gratitude toward (Ninth Grade Campus Principal) Brandi Rodney and (Dekaney Principal) Alonzo Reynolds III for the great work they're doing there.”

Trustee Durant commented on the opportunity she had to attend the 2021 Summer Graduation ceremony, held Saturday, August 7 at Dekaney High School's Star Theater, and to address the students and their guests gathered that morning for the celebration.

“There was a lot of excitement, there was a lot of family and participation there,” Durant said, “and so it was just a wonderful experience to be able to shake their hands and see them obtain their diploma.”

9. Presentations (8:00 PM)

9.1. 2021-2026 Spring Independent School District Strategic Plan: Every Student, Every Teacher, Every Day (8:00 PM)

Superintendent Dr. Rodney Watson and the Board of Trustees – collectively referred to as Spring ISD's Team of Eight – joined together to unveil the district's new strategic direction, called Every Student—Every Teacher—Every Day, just a day before the district welcomed back all of its 33,000 students to campus for the 2021-22 school year.

The new plan was designed to build upon the work already accomplished and underway as part of the district's EveryChild 2020 strategic plan, released in 2015, less than a year after Watson became the district's superintendent.

“Spring has a rich history and an engaged community. Back in 2015, we saw the need to develop a five-year strategic plan in which every aspect of the plan would be student-centered, that would be about every child,” said Board President Rhonda Newhouse, going on to describe a few of the challenges the district had faced since then – including the pandemic and natural disasters such as Hurricane Harvey – and how the vision and mission set forth at that time had

guided Spring ISD's work to serve students and the community.

"Now those years are behind us, and it is time that we build a new plan designed to build upon the work already accomplished in the district's EveryChild 2020 plan."

In introducing Every Student—Every Teacher—Every Day, the superintendent said that the decision to release the plan on the eve of the start of the 2021-22 school year was intentional, considering the district's goal of focusing on student outcomes in spite of the ongoing challenges of the COVID-19 pandemic.

"As we continue to move forward with the work here in Spring ISD," Watson said, "we are confident that the plan that we're putting forth will definitely guide us as we make the needed growth and gains."

As explained during the presentation by the superintendent and members of the board, Every Student—Every Teacher—Every Day lays out six key priorities: Student Outcomes, Equity, Opportunities, Leadership, Well-Being and Engagement. Within each priority, there are also key imperatives and commitments that establish the district's focus.

In discussing the various priorities of the plan, trustees connected its high-level strategic elements to the day-to-day work done with students, including at the district's specialty schools and programs, which are helping to make additional opportunities and choices accessible for students across the district.

"So, the prong of our priorities dealing with opportunities is really about expanding academic offerings so students can explore, learn and excel," said Trustee Winford Adams Jr., going on to discuss the district's growing number of schools of choice as well as new specialty programs being offered within zoned neighborhood campuses, such as the International Baccalaureate program at Springwoods Village Middle School, the Bailey School for the Performing and Visual Arts at Bailey Middle School, the Pathways in Technology Early College High School (P-TECH) at Dekaney High School, and the district's newly launched School for

International Studies at Bammel, which will eventually be Spring ISD's first pre-K–8 campus.

Describing the System of Great Schools (SGS) strategy that was helping inform the district's current development of these types of programs, Adams said, "It's a district-level problem solving approach that we are using to analyze and understand school performance and community demand, and deliver the schools families want and need in their communities."

Touching on the topic of leadership within the district – another of the plan's six priorities – Trustee Justine Durant explained how the district's leadership definition was encouraging the development of leadership pipelines and pathways to identify high potential everywhere within the organization.

"In Spring ISD, we believe that everyone is a leader," Durant said. "We identify and support leaders across every level within the district."

She went on to explain that the district's emphasis on strong leaders and ongoing leadership development – including ensuring excellent principals and administrators at each campus – also encompasses an emphasis on making sure current and emerging district leaders are outcome-driven, service-oriented, and relationship-centered.

"We have to set clear direction, clear opportunities, and support where the leadership is functioning and where we need to add additional education or additional training," Durant said. "Whatever we need to invest to ensure that every individual has what they need to be successful."

Introducing well-being as another of the plan's priorities, Trustee Dr. Deborah Jensen stressed the importance of ensuring that schools are welcoming, safe environments where students' social and emotional needs are met, which she explained was a critical foundation for learning to take place.

"This is why well-being is one of our strategic priorities," Jensen said, "so that we can build the child up and they can achieve all they can do."

Trustee Kelly P. Hodges, meanwhile, discussed the role of quality engagement with stakeholders and community members and how this engagement – which she described as a two-way street between the district and those it serves – was important to successful schools and successful students.

“Engagement is an integral part of the success of Spring ISD,” Hodges said. “So, we encourage our parents, business owners, and all who have a vested interest in the community to get involved and to stay engaged.”

In introducing the theme of equity, Adams related Spring ISD’s decision last year to commission an equity audit of the district in order to identify areas where the district might be falling short in its efforts to serve the unique needs of every student on every campus.

“What we want to do going forward is eliminate any inequities in access to opportunities for our children, and continuously raise the level of achievement for all of our children,” he said.

“So that means we're going to be working to eliminate academic outcome disparities across the groups, and ensuring that personal characteristics – whether real or perceived – don't predict any individual’s educational outcomes.”

Adams explained that staff, students, parents and guardians, and the entire community would work together to promote a culture of equity and high expectations for all students – a theme that the superintendent returned to again during his own summary at the end of the presentation.

“We believe that if we set the goals high enough that we will reach our goal of having a Spring ISD graduate who is a lifelong learner, a critical thinker, and a responsible citizen who displays good character, ready to contribute, compete and lead in today's global society,” Watson said.

“Next month, we’ll be coming back to our community to talk about specific metrics that we will be using to measure each of these actions,” he said. “With that, we thank you for supporting us through EveryChild 2020, and we transition to Every Student—Every Teacher—Every Day. Thank you.”

10. Board of Trustees (8:30 PM)

10.1. Appointment of One Delegate and One Alternate for the 2021 TASB Delegate Assembly (8:30 PM)

The Board unanimously appointed Dr. Deborah Jensen as its delegate and Natasha McDaniel as its alternate to the 2021 Texas Association of School Boards Delegate Assembly.

The event will be held on Sept. 25 in Dallas.

Trustee Durant moved that the Board of Trustees appoint Trustee Jensen as its delegate and Trustee Natasha McDaniel as its alternate to the 2021 TASB Delegate Assembly. Trustee Adams seconded the motion and the motion carried unanimously.

10.2. Endorsement of Candidates for TASB Board of Directors (8:32PM)

The Trustees endorsed candidates for the TASB Board of Directors, including Georgan Reitmeier for Position 4A , Dr. Darlene Breaux for Position 4B, and Tony Hopkins for Position 4C.

Trustee Hodges moved that the Board of Trustees endorse Georgan Reitmeier for Position 4A of the TASB Board of Directors. Trustee Adams seconded the motion and the motion carried with 6 in favor and 1 abstention (Trustee McDaniel).

Trustee Adams moved that the Board of Trustees endorse Darlene Breaux for Position 4B of the TASB Board of Directors. Trustee Durant seconded the motion and the motion carried with 5 in favor and 2 abstentions (Trustees Correa and McDaniel).

Trustee Adams moved that the Board of Trustees endorse Tony Hopkins for Position 4C of the TASB Board of Directors. Trustee Durant seconded the motion and the motion carried with 5 in favor and 2 abstentions (Trustees Correa and McDaniel).

11. Board Governance Committee (8:35 PM)

11.1. Board Governance Committee Update (8:35 PM)

The Board Governance Committee, chaired by Trustee Justine Durant, provided a brief update that included a summary on the recent legislative session by Trustee Jensen,

which she noted had been described recently as the “most messed up, weird legislative session.”

“Furthermore, we’re waiting right now on really critical legislation where we need virtual school support from the state of Texas, and that was not achieved in our last session,” she said.

Trustee Durant concluded by reminding everyone that the Trustees updated the criteria for the Employee Excellence Award given each month to a deserving staff member by aligning it with the district’s Leadership Definition.

The nomination form is available on the Spring ISD website and can be submitted on behalf of any employee who embodies the behaviors outlined by the Leadership Definition, including Service-Oriented, Outcome-Driven and Relationship-Centered.

“The Board is excited about launching this year’s new criteria and looking forward to the candidates we will receive,” Durant said.

12. General Counsel (8:39 PM)

12.1. Resolution Providing Additional Leave Time Due to COVID-19 (8:39 PM)

The Trustees approved a resolution providing employees with up to five additional leave days in the event of a positive PCR COVID test.

For example, if an employee is absent from work and uses six days of leave, the employee will have five days deducted from their leave banks and the district will return one day back to the employee’s leave banks.

As a second example, if 10 days of leave are used by an employee, the district will return five days back to the leave banks. As a third example, if 15 days of leave are used by an employee, the district will return five days back to the employee’s leave banks.

General Counsel Jeremy Binkley said the additional days will provide employees with the benefit of COVID leave even

though the district's participation in the Families First Coronavirus Act has expired.

Trustee Hodges moved that the Board of Trustees approve the Resolution Providing Leave Days Due to Positive COVID-19 Test. Trustee Jensen seconded the motion and the motion carried unanimously.

13. Consent Agenda (8:40 PM)

The Board approved the Consent Agenda items that were discussed in detail at the August 5, 2021 Board Work Session.

Trustee Durant moved that the Board of Trustees approve and adopt all of the items listed on the Consent Agenda. Trustee Hodges seconded the motion and the motion carried with 6 in favor and 1 abstention (Trustee McDaniel).

- 13.1. Review and Approval of Minutes from the Following Meetings:
 - June 3, 2021 Board Work Session
 - June 8, 2021 Regular Meeting
 - June 22, 2021 Special Called Session
 - July 13, 2021 Special Called Session
 - July 20, 2021 Special Called Session
- 13.2. Order and Notice of Trustee Election for Positions 6 and 7
The Board will consider approving the Order and Notice of Trustee Election
- 13.3. 2021-2022 Student Code of Conduct
The Board will consider approving the 2021-2022 Student Code of Conduct.
- 13.4. Taxpayer Refunds
The Board will ratify taxpayer refunds.
- 13.5. Disposition of Worn and Out-of-Adoption Textbooks
The Board will consider approving the disposition of worn and out-of-adoption textbooks.
- 13.6. Request for Proposal (RFP) #16-006 – Worker's Compensation Third Party Administration

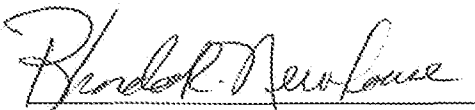
The Board will consider allowing an additional renewal term, up to one year, for the previously awarded contract with York Risk Services Group, Inc., now Sedgwick.

13.7. Request for Proposal (RFP) # 22-001 – Guidance & Counseling Mental Health Support and Intervention

The Board will consider awarding a contract for Guidance & Counseling Mental Health Support and Intervention services to the providers recommended by the administration.

14. Adjournment (8:41 PM)

On a motion by Trustee Durant, seconded by Trustee Hodges, the Board unanimously adjourned the meeting at 8:41 PM.



Rhonda R. Newhouse,
President



Kelly P. Hodges, Secretary

BREAKING NEWS Watch Live: Justice Department holds press conference to announce its civil enforcement action [Read More »](#)

CORONAVIRUS

Spring ISD implements mask mandate 'to ensure the safety of our students and our staff'

The announcement came the evening before the first day of school, but the mask requirement will not immediately go into effect.



Author: **Cory McCord (KHOU)**
Published: 9:32 PM CDT August 10, 2021
Updated: 7:06 AM CDT August 11, 2021



SPRING, Texas — Spring Independent School District Superintendent Dr. Rodney Watson announced late Tuesday that his district will implement a mandatory mask mandate this school year.

The mandate goes into effect on Monday, Aug. 16 and will apply to all students, staff and visitors regardless of vaccination status. The first day of school in Spring ISD is Wednesday, Aug. 11.

It's not about defying the governor, superintendent says

"One of our core values in Spring ISD is we will do whatever we can do to ensure the safety of our students and our staff," Dr. Watson said at a Wednesday morning press conference. "I don't want to focus so much on defying the governor. We are ensuring that our kids are safe. We're ensuring that our teachers are safe. And we're ensuring the learning needs for each student is met."

Watch: Spring ISD's superintendent discusses new mask requirement

Not trying to defy the governor, just keeping kids safe with mask requirement, S...



Houston ISD is expected to vote on a similar mask requirement this week, and both Austin and Dallas ISDs have approved mask requirements as well, despite a ban on such mandates by Gov. Greg Abbott's executive order.

Dr. Watson said while safety is a priority, Spring ISD is also focused on education and does not want COVID-19 to serve as a distraction.

"We are charged with educating kids, and we know, based on what happened all across the country last year, with where kids are and how they ended up academically, that we must ensure that we have nothing that breaks that opportunity to grow."

Contact tracing

Spring ISD will also provide contact tracing itself instead of referring the cases to Harris County Public Health. The district will alert families and staff of any positive cases on campuses and within the district by sending out messages to those affected.

"We made these changes to ensure everyone feels like they are getting the information they need about COVID-19 in our school community," Watson said in a statement.

The district will also send out a survey to see how parents feel about a potential remote learning option for students.

Dr. Watson's full statement:

"As promised, I'm updating you on some changes we've made to our COVID-19 health and safety protocols. This evening, I announced at our board meeting that we will be requiring the wearing of masks for all students, staff, and visitors to our district buildings and campuses – regardless of vaccination status. This safety protocol will go into effect on Monday, Aug. 16.

"Additionally, we will be providing contact tracing within Spring ISD, rather than referring those positive cases to Harris County Public Health for contact tracing. We also will let our families and staff know about any positive cases on our campuses or in our district facilities by sending out a general communication to those at the campus or at the affected work location.

"We made these changes to ensure everyone feels like they are getting the information they need about COVID-19 in our school community. For families and staff who were with us for the 2020-21 school year, you'll remember how this process worked. If there was a positive case on the campus, our Emergency Management & School Safety team would handle the contact tracing, and our principals/administrators would work with our Communications Department to send out a general notification. This process worked very well last year, so we want to continue with it as long as necessary.

"In addition, tomorrow (Aug. 11) we will be sending out a survey to all parents/guardians asking about your potential interest in a remote learning option. As you may know, we had been planning to move forward with our Spring Virtual Academy until we learned in June that funding had not been authorized.

"We understand from all of your feedback that many families would still like this as an option. Based on the responses to the survey, we're going to look at all possibilities in providing this

virtual alternative to students. We will keep you updated as we move forward, including how to apply."

KHOU 11 interviewed Watson last week about the health and safety protocols before the mask mandate was in place. That interview is below:



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Here are some stories about what's happening in other Texas school districts:

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RELATED: Masks will be optional in Katy ISD this school year, district officials say

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RELATED: 'We must remain vigilant' | Houston ISD to vote on mask mandate for students, staff and visitors

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RELATED: Austin ISD superintendent says decision to issue mask mandate was not taken lightly

RELATED: Cy-Fair ISD will offer virtual learning options for young students, joining Fort Bend ISD, Conroe ISD

RELATED: 'We're in an urgent crisis' | Dallas ISD to 'temporarily' require masks at schools and facilities, officials announce

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KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2021

VIA EMAIL

Dr. Rodney Watson
Superintendent, Spring ISD
16717 Ella Blvd.
Houston, TX 77090
rwatson@springisd.org

Dear Dr. Watson:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>

temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

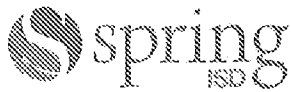
I request your acknowledgement by 5 p.m. Wednesday, August 18, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,

A handwritten signature in black ink, appearing to read "Ken Paxton", with a stylized, cursive script.

KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).



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August 18, 2021

Attorney General Ken Paxton
c/o Mr. Austin Kinghorn, General Counsel
Chief, General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
Via email: austin.kinghorn@oag.texas.gov

Attorney General Paxton:

Spring Independent School District ("Spring ISD") acknowledges receipt of the August 17, 2021 correspondence from the Attorney General of Texas. Spring ISD is perplexed by the letter.

The August 17, 2021 letter references the Texas Supreme Court's August 15, 2021 orders which stay temporary restraining orders issued by courts in Dallas and Bexar Counties regarding county judges' challenges to Executive Order GA-38's prohibition on county officials mandating face coverings countywide. The Texas Supreme Court's orders addressed and applied to mask mandates issued by the Dallas and Bexar County Judges. The orders did not apply to school districts. Neither Spring ISD nor any school district was named in the orders and neither Spring ISD nor any other school district was a party in either the Dallas County or Bexar County proceedings that resulted in the Texas Supreme Court's August 15, 2021 orders.

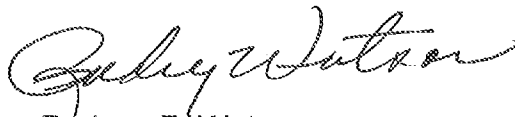
The August 17, 2021 letter also fails to acknowledge that there are orders from courts in other counties, including a Temporary Restraining Order in *The Southern Center for Child Advocacy v. Greg Abbott, in his official capacity as Governor of Texas*, Cause No. D-1-GN-21-033792, in the 53rd Judicial District, Travis County, Texas (the "SCCA TRO"); and a Temporary Restraining Order in *Harris County v. Greg Abbott, in his official capacity as Governor of Texas, and Ken Paxton, in his official capacity as Texas Attorney General*, Cause No. D-1-GN-21-003896, in the 345th Judicial District, Travis County, Texas (the "Harris County TRO"), and an Order Granting Temporary Restraining Order and Request for Judicial Notice in *La Joya Indep. Sch. Dist., et al., v. Greg Abbott, in his official capacity as Governor of Texas*, Cause No. D-1-GN-21-003897, in the 353rd Judicial District, Travis County, Texas (the "La Joya ISD TRO").

The SCCA TRO "temporarily restrained and enjoined" the Governor and his agents "from enforcing the portions of Executive Order GA 38 regarding face coverings against Texas independent school districts." The Harris County TRO ordered that Governor Greg Abbott was temporarily restrained and enjoined from enforcing the portions of Executive Order GA 38 regarding face coverings "against any entity or person in Harris County." At this time, the SCCA TRO and the Harris County TRO have not been stayed by any court. And, notably, the Texas Supreme Court has already denied the State of Texas's August 16, 2021 letter request to *inter alia* apply the emergency relief granted by the Texas Supreme Court regarding the Dallas County and Bexar County cases to the SCCA and Harris County TROs.

Because the SCCA TRO expressly enjoins the Governor from enforcing GA 38 regarding face coverings against Texas public school districts and the Harris County TRO specifically enjoins such enforcement as to persons and entities in Harris County, Spring ISD believes GA 38's prohibition on mandating face coverings is no longer enforceable against it. Spring ISD is not violating any court order that applies to it to warrant your threatened contempt action.

Spring ISD will comply with any applicable court orders. The District reserves the right to assert in any litigation the District's own statutory authority to take actions to protect the health and safety of students and staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney E. Watson". The signature is fluid and cursive, with the first name "Rodney" being more prominent than the last name "Watson".

Rodney E. Watson
Superintendent of Schools

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Bonnie Chester on behalf of Todd Dickerson
Bar No. 24118368
bonnie.chester@oag.texas.gov
Envelope ID: 57198497
Status as of 9/13/2021 4:17 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Todd Dickerson		todd.dickerson@oag.texas.gov	9/13/2021 3:51:48 PM	SENT
Thomas Ray		thomas.ray@oag.texas.gov	9/13/2021 3:51:48 PM	SENT
Halie Daniels		Halie.Daniels@oag.texas.gov	9/13/2021 3:51:48 PM	SENT
Renee IGuerrero-Adams		Renee.Guerrero-Adams@oag.texas.gov	9/13/2021 3:51:48 PM	SENT
Christopher Hilton		christopher.hilton@oag.texas.gov	9/13/2021 3:51:48 PM	SENT

Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Richardson ISD’s mask mandate should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

6. Defendant Richardson Independent School District (“Richardson ISD”) has approximately 39,619 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Richardson ISD is the board of trustees for Richardson ISD.

8. Defendant Dr. Jeannie Stone is the superintendent of Richardson ISD.

² *Id.* § 418.011.

9. Defendants Karen Clardy, Regina Harris, Debbie Rentería, Megan Timme, Eron Linn, Eric Eager, and Chris Poteet are members of the Richardson ISD Board of Trustees.

10. Defendants may be served with process through Karen Clardy, the president of the Richardson ISD Board of Trustees, or through Dr. Jeannie Stone, the Richardson ISD superintendent.

JURISDICTION AND VENUE

11. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

12. Venue is proper in Harris County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State's Emergency Response.

13. Two core purposes of the Texas Disaster Act of 1975 ("TDA") are to: (1) mitigate the "damage, injury, and loss of life and property" resulting from a disaster; and (2) "provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters."³

³ Tex. Gov't Code § 418.002(1), (3).

14. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

15. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

16. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

17. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

¹⁴ *Id.* § 418.108(g).

a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

18. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

19. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

20. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

21. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

22. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure.”²⁰

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ Ex. A., Pgs. 21-26, GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at 21.

²⁰ *Id.* at 22–23.

23. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

24. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

25. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

26. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

27. GA-38’s prohibition on local officials’ facemask mandates falls comfortably within Governor Abbott’s broad power to “control ingress and egress to

²¹ *Id.* at 23

²² *Id.* at 23–24.

²³ *Id.* at 24.

²⁴ *Id.* at 23–24.

²⁵ *Id.* at 23–25.

²⁶ *Id.* at 24.

²⁷ *Id.* at 21.

²⁸ *Id.* at 23.

and from a disaster area and the movement of persons and occupancy of premises in the area.”²⁹

28. Specifically, GA-38’s ban on facemask mandates controls “ingress and egress” to, “movement” in, and “occupancy of” a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when “occupying” premises in a disaster area.

III. Richardson ISD Issues a Facemask Mandate in Defiance of GA-38.

29. On or about August 12, 2021, Richardson ISD issued an order providing that “all people inside RISD schools and buildings and at RISD indoor events will be required to wear a mask” due to the COVID-19 pandemic (“Defendants’ Facemask Order”).³⁰

30. Further, Richardson ISD recently voted to extend the mask mandate through the beginning of October until the next Board of Trustees meeting.³¹

31. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

32. On August 17, 2021, the Office of Attorney General sent a letter to Richardson ISD Superintendent Stone, warning that the imposition of the mask

²⁹ Tex. Gov’t Code § 418.018(c).

³⁰ THE BLUEPRINT RISD’S BACK TO SCHOOL PLAN, <https://web.risd.org/cv19/> (last visited September 9, 2021), a copy of which is attached hereto as Exhibit E, Pgs. 31-45.

³¹ Maria Guerrero, RICHARDSON ISD KEEPS MASK MANDATE; RISING CASES AT 7 CAMPUSES CAUSE CONCERN, NBCDFW (September 3, 2021), *available at* <https://www.nbcdfw.com/news/coronavirus/richardson-isd-keeps-mask-mandate-rising-cases-at-7-campuses-cause-concern/2734393/>. A copy is attached hereto as Exhibit F, Pgs. 46-56.

mandate exceeded her authority and violated GA-38. The letter stated in light of the Texas Supreme Court's rulings, the Office of the Attorney General requests that: "you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office..."³²

33. Dr. Stone's counsel Ms. Mia Martin quickly responded with a letter on August 17, 2021, stating clearly that Richardson ISD will not be rescinding the mask mandate.³³

34. The response letter went on to state that "Dr. Stone. . . used her professional judgment and discretion to implement a mask mandate. . ." ³⁴ Further, that the Supreme Court's Orders that stayed other matters did "not apply to school districts."³⁵

35. Finally, the response letter concludes that "RISD reasonably and in good faith believes that the prohibition in GA-38 concerning mask mandates currently is not enforceable against it or other school districts."³⁶

36. As of September 13, 2021, Richardson ISD and Superintendent Stone have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton's office, and furthermore, they have indicated their intent to continue defying GA-38.

³² Exhibit G, Pgs. 57-58, Office of the Attorney General Letter to Richardson ISD Superintendent Dr. Jeannie Stone, August 17, 2021.

³³ Exhibit H, Pgs. 59-60, Richardson ISD Response Letter, August 17, 2021

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

CLAIMS FOR RELIEF

37. Pursuant to Texas's Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

38. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts' general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts' general authority and GA-38's specific prohibition, GA-38's specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants' Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION

39. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.³⁷ "A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits."³⁸ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.³⁹ These requirements are readily met here.

³⁷ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

³⁸ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

³⁹ *Id.*

I. The State will Likely Succeed on the Merits.

40. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants' Facemask Order and (2) Governor Abbott lawfully suspended Defendants' statutory authority to issue their Facemask Order.

A. GA-38 Expressly Preempts Defendants' Facemask Order.

41. The point is simple. Governor Abbott's emergency orders carry the force and effect of law.⁴⁰ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively "state laws." Traditional preemption principles dictate that when a state law conflicts with a local law, the state law controls.⁴¹

42. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.⁴² Defendants' Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by, GA-38. As such, Defendants' Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

43. A review of the Legislature's intent, which is a focus of a preemption analysis,⁴³ supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board

⁴⁰ Tex. Gov't Code § 418.012.

⁴¹ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass'n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

⁴² Ex. A, at Pgs. 24–26.

⁴³ *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

44. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴⁴ (2) that explicitly carry the force and effect of *state* laws.⁴⁵ Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁴⁶ Further, the Governor is the only one with the emergency powers to suspend laws;⁴⁷ use all available public resources, including resources of cities and counties;⁴⁸ and control the movement of persons and occupancy of premises on a statewide level.⁴⁹ The Legislature's intent is clear. In the event of a conflict, Governor Abbott's emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

45. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁵⁰ But here harmonization *is* possible: school districts' general authority is not abolished, but merely circumscribed, by GA-38's prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁵¹ so too does that general authority not exempt a school district from

⁴⁴ See Tex. Gov't Code §§ 418.014–.015.

⁴⁵ *Id.* § 418.012.

⁴⁶ *Id.* § 418.011.

⁴⁷ *Id.* § 418.016(a).

⁴⁸ *Id.* § 418.017.

⁴⁹ *Id.* § 418.018.

⁵⁰ See, e.g., Tex. Gov't Code § 311.026.

⁵¹ See *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

complying with GA-38. GA-38's ban on mask mandates functions as a particular limit on school districts' general authority.

46. The TDA reflects the Legislature's comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁵² In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

47. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.⁵³ And if the Governor's orders under the TDA could not preempt school district rules, then county judges' and city mayors' orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State's response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA and it is not the law.

⁵² *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) (“Nobody can question that the public schools of this state ‘are quasi public entities and are subject to direct statutory control’ by the Legislature.”).

⁵³ See Tex. Gov't Code § 418.108.

48. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

49. Governor Abbott, using his TDA-granted power,⁵⁴ suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵⁵ Under the circumstances, Defendants had no authority to issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

50. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁵⁶ The court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means of rules and regulations.”⁵⁷ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁵⁸

51. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁵⁹ The

⁵⁴ TEX. GOV’T CODE § 418.016(a).

⁵⁵ Ex. A, Pg. 26.

⁵⁶ 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

⁵⁷ *Id.* at 824 (citing various dictionaries).

⁵⁸ *Id.*

⁵⁹ *Id.*

court reasoned that, “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁶⁰ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁶¹ The El Paso Court of Appeals’ reasoning applies equally here.

52. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

53. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

II. The State will be Irreparably Injured Absent an Injunction.

54. The State’s injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁶²

55. There, the Court explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”⁶³ The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s

⁶⁰ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁶¹ *Id.*

⁶² 620 S.W.3d 400, 410 (Tex. 2020).

⁶³ *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

control over local officials who are misapplying or defying State laws.⁶⁴ The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”⁶⁵

56. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”⁶⁶ The Court found that, “[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”⁶⁷

57. Per *Hollins*, the irreparable injury requirement favors the State.

58. The El Paso Court of Appeals rightly viewed *Hollins* “as controlling” on the irreparable injury issue.⁶⁸

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

59. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁶⁹ There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *El Paso County*, 618 S.W.3d at 826.

⁶⁹ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

60. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials' attempt to usurp the Governor's power to control the direction of the State's response to the COVID-19 pandemic. The status quo favors the State.

61. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38's ban on facemask mandates.⁷⁰ Each time, the Court overturned these injunctions because they altered the status quo.⁷¹

62. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁷² The Court explained that these facemask cases turn on a pure legal question: "[W]hich government officials have the legal authority to decide what the government's position on [facemasks] will be."⁷³ The Court continued: "The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels."⁷⁴ The Court held that the status quo of "gubernatorial oversight" of disaster-related decisions "should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought."⁷⁵

⁷⁰ See Exhibits B-D, Pgs. 27-30.

⁷¹ *Id.*

⁷² Exhibit D, Pgs. 29-30.

⁷³ *Id.* at 29.

⁷⁴ *Id.*

⁷⁵ *Id.*

63. Texas Supreme Court precedent requires that this Court enjoin Defendants' Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

64. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

65. For the reasons discussed above, the State respectfully prays that this Court:

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants' Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State's application for a temporary injunction;
- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and

H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

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ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

V.

RICHARDSON INDEPENDENT SCHOOL DISTRICT, BOARD OF TRUSTEES OF RICHARDSON INDEPENDENT SCHOOL DISTRICT, DR. JEANNIE STONE, in her official capacity as superintendent of the Richardson Independent School District, and KAREN CLARDY, REGINA HARRIS, DEBBIE RENTERIA, MEGAN TIMME, ERON LINN, ERIC EAGER, and CHRIS POTEET, in their official capacities as trustees of the Richardson Independent School District,

Defendants.

.....

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

JUDICIAL DISTRICT

**DECLARATION OF HALIE DANIELS IN SUPPORT OF THE STATE OF TEXAS'S VERIFIED
ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Halie E. Daniels, my date of birth is January 5, 1989 and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency orders in question and other publicly available materials which this Court will be

able to take judicial notice of.

Executed in Travis County, State of Texas, on the 14th day of September 2021.

/s/ Halie Elizabeth Daniels

Declarant



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

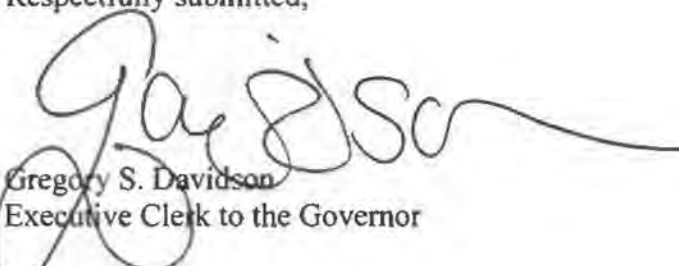
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment



Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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JUL 29 2021

4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
 - a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15 PM O'CLOCK
JUL 29 2021

IN THE SUPREME COURT OF TEXAS

No. 21-0687

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

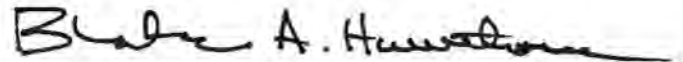
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CH16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK



IN THE SUPREME COURT OF TEXAS

No. 21-0686

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

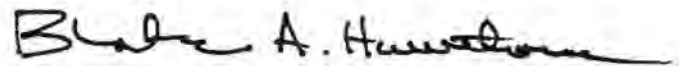
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK



IN THE SUPREME COURT OF TEXAS

No. 21-0720

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

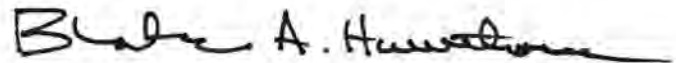
1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.



Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

COVID-19 Pandemic

Menu

THE BLUEPRINT

RISD's Back To School Plan - 2021-2022

Updates as of September 10, 2021



RISD COVID-19 Notification Portal

Select Language ▼



Richardson ISD's priority continues to remain the health and safety of our students, staff and their families. RISD is implementing a variety of precautions and protocols for the 2021-22 school year in response to the COVID-19 pandemic to slow the spread of COVID-19. Some protocols may be subject to change based on updated guidance from the state of Texas, public health authorities, or changing conditions in Dallas County. Please ask questions or submit feedback to RISD Let's Talk.

Face Coverings:

- RISD has made a local decision to require masks.
- Students and staff are required to wear a mask indoors.
- Considerations for masking and other safety requirements will be addressed in the RISD Student Code of Conduct, along with identified campus procedures if requirements are not followed. It is important to note that masking does NOT preclude social distancing. Cloth face coverings should be worn, and social distancing followed when possible.
- Children younger than 2 years old should not wear a mask at any time.
- It may be impractical for students to wear a face mask while participating in some non UIL athletic or other extracurricular activities; however, those students required to wear a cloth face covering should wear them when entering and exiting facilities and practice areas and when not actively engaging in those activities.
- Schools may allow students who are actively exercising to remove their cloth face covering as long as they maintain social distancing.
- Schools must require students, teachers, and staff to wear cloth face coverings as they arrange themselves in positions that will allow them to maintain safe distance.

- Individual needs regarding face masks will be addressed on a case-by-case basis. Requests for accommodations should be submitted to campus administration.
- Students and staff will be provided with a mask.
- Virtual teachers assigned to private, socially distanced areas are not required to wear a mask while directly (synchronously) working with virtual students.
- Please refer to the following Face Covering Flow Chart for how face covering compliance with students will be handled at the campus level. (Español)

Health Precautions

- RISD requires all students and staff to wear a mask during school while indoors.
- Masks are required. It is important to note no classroom placements or schedules will be based on vaccination status.
- Bullying by any student directed towards a student who is wearing a mask or student who is not wearing a mask will not be tolerated and will be addressed by the campus as part of the discipline procedures.
- All adults and students are expected to self-screen and screen their children for symptoms of illness before coming to campus each day. (There is not a daily online RISD screener for the 2021-22 school year).
- Students and parents are expected to stay home and report to their campus nurse and RISD employees are expected to report to health services and their direct supervisor if they have symptoms, have tested positive for COVID-19, or have been exposed to someone who has tested positive for COVID-19.
- Health Services will monitor positive cases within RISD schools, programs, and facilities and will collaborate with Dallas County Health Department in all decisions that could potentially require closing of classrooms and schools.

- Parents are encouraged to talk with their students about COVID-19, and reinforce basic safety measures.
- If you believe your child has an existing medical condition that may prevent them from attending school, please reach out to SSS Coordinator Jessica Garrett at jessica.garrett@risd.org for homebound criteria information.

Environmental Protocols

- Air purifier/filtration system provided in every classroom
- Clear desk shields will be available for any student or teacher in school at their request.
- Increased ventilation and HVAC air filtering where possible in classrooms, indoor common areas, and student transportation.
- Increased cleaning of surfaces and common areas.
- Additional time allocated for handwashing in elementary grades.
- Beginning of year reminders for students about safety protocols, including demonstration of proper handwashing technique for elementary students.
- Encourage frequent use of hand sanitizer.
- Students and staff are encouraged to bring their own reusable water bottle for use throughout the day and take water bottles home to be cleaned on a daily basis.
- RISD staff and students will social distance when possible.
- Campuses will be encouraged to utilize outdoor learning spaces for lunch and other learning experiences when possible and available.
- Teachers will be encouraged to keep doors and windows open to increase ventilation.
- RISD has suspended leasing buildings and facilities to third parties for after-school hours use.

- The district is currently limiting the number of volunteers and visitors during the school day; and any visitors and volunteers will only be allowed in designated areas of the campus that have minimal interaction with students.
- Cafeterias will be closed to visitors during lunch hours.
- The district will continue to monitor and communicate any changes with parents and the school community throughout the school year.

Clinic Considerations

- The campus nurse will work closely with the principal and front office staff to determine how to best meet the needs of all students while maintaining confidentiality and possible isolation. Plans will be campus specific because of the multiple sizes and layouts of each clinic.
- In an effort to minimize exposure, clinic traffic will be divided between students that are feeling ill and students that are not.
- All teachers will be provided with a basic first-aid kit, and teachers will assist and direct students to handle minor injuries in the classroom or front office.
- Nurses will determine processes for medication administration, keeping healthy students separate from those complaining of illness. Medication administration may occur (where confidentiality permits) in the classroom, in another room within the school or in the clinic. Medication administration may be delegated to other staff designated by the principal.
- RISD staff will only administer those medications that must be given during the school day. If the therapeutic use of the medication can be accomplished by dosage outside of the school day, the medication should not be administered at school.
- Nurses will determine processes for performing medical procedures to

maintain a clean area where the student will not be exposed to others. Medical procedures may take place in the classroom (where confidentiality permits), in another room within the school, or in the clinic. Nursing procedures may not be delegated to other staff; however, clinic coverage may be needed if the nurse must leave the clinic in order to perform a procedure.

- An isolation area will be determined for students exhibiting symptoms of COVID-19 while they are waiting for pick up. Isolation areas should be located such that staff can visually monitor the child while still maintaining social distancing.
- Clinics can no longer be used for rest, cool down, or an emotional safe place for anxiety. Principals should identify an alternate space for students in these situations.
- Clinics can no longer be used for incontinence issues, which is not a medical issue. Students may bring spare clothing in their backpack and use a designated restroom for cleanup. Front office staff may call home for spare clothing if necessary.
- Clinic restrooms will be for student use while in the clinic. Staff may not use the clinic restroom and should use designated staff restrooms.
- It is recommended that teachers call before sending a student to the clinic so that the nurse can prepare the clinic if the student is symptomatic, relocating any healthy students, and allowing the nurse to don proper PPE.

Asthma, Anaphylaxis, Allergies

- Students with asthma, anaphylaxis, or other life threatening conditions will be encouraged to carry and/or self-administer medication prescribed for these conditions provided the physician and the parent/ guardian provide permission for the student to do so on the medication administration paperwork. All

students who self-carry medication at school are still required to complete and provide the appropriate paperwork to their campus nurse.

- Students with symptoms of COVID-19 should not attend school. Symptoms of asthma and COVID-19 may overlap, including cough and shortness of breath. Parents should collaborate with the campus nurse and personal healthcare provider to determine the best option for what to do when their child experiences an acute asthma attack.
- According to the CDC, during this COVID-19 pandemic, asthma treatments using inhalers with spacers are preferred over nebulizer treatments whenever possible. Aerosols generated by nebulizer treatments are potentially infectious. If students require a nebulizer at school, a physician note will be required explaining why that student cannot use an inhaler with spacer.
- Students with seasonal allergies will be permitted in school. Students that have significant sneezing and coughing may be referred to the clinic so that the campus nurse can work with that parent to achieve better control.

Missing School

- Students or staff who are symptomatic, positive, or choosing to quarantine may not participate in face-to-face school activities until cleared to return under CDC guidelines. The campus nurse for students and RISD Health Services for employees will evaluate each situation and provide a return to school or work date.
- Students who miss school due to illness or quarantine will be able to keep up with assignments and make up work upon their return, as with any other excused absence due to illness.

- Any student or family needing internet access can notify their school to check

out an RISD hotspot.

- What happens if my student tests positive or chooses to be quarantined but is not symptomatic and is able to continue with learning?
 - Pre-K through 6th grade – a quarantined elementary student will be provided with a COVID support teacher. The COVID support teacher will follow the RISD curriculum and provide students with some synchronous and asynchronous instruction and instructional materials. All submitted student work will be given to the student's homeroom teacher to be reviewed and graded, if applicable. The student stays enrolled at their home school, the COVID support teacher will simply help support the expected learning objectives during the quarantine or illness period. Students will take home the student iPad to support learning expectations.
 - Grades 7-12: Secondary students will be assigned a COVID support teacher in the four core areas, Reading/Language Arts, Math, Science and Social Studies. One teacher per core area per grade level will provide content support to any student missing school due to quarantine. The school will provide students and parents the COVID support teacher information when quarantine begins. The core teacher will provide general support for the course and students will be able to ask questions and receive tutorial support. All assignments will be distributed and graded by the student's scheduled teacher. Those assignments will be located in google classroom with directions and information provided by the teacher. Logging into scheduled zooms with COVID support teachers is required for quarantine days to not count as an absence for the student.

COVID-19 Vaccinations

- Eligible students and staff are strongly encouraged to get vaccinated to

protect themselves against COVID-19.

- If a child has been vaccinated, parents are requested to send a copy of the vaccine card to the campus nurse so the information can be included with the student's records.

Experiencing Symptoms

The presence of any of the symptoms below generally suggests a person has an infectious illness and should not attend school, regardless of whether the illness is COVID-19:

- Temperature of 100.0 degrees Fahrenheit or higher
- Sore throat (not caused by seasonal allergies)
- Cough (for students with chronic cough due to allergies or asthma, a change in their cough from baseline)
- Difficulty breathing (for students with asthma, a change from their baseline breathing)
- Diarrhea or vomiting
- New onset of severe headache, especially with a fever
- Loss of taste or smell
- Congestion or runny nose

RISD staff and students should not attend school in-person if they or their parent identifies new development of any of the symptoms above. Parents should contact their child's school and report that their child is sick. The school nurse may ask some additional questions to help determine when it is safe for the child to return to school. Students with COVID-19 like symptoms will be excluded from school for 10

days unless they can provide a negative rapid antigen result, or a negative PCR result,

a medical note clearing the student to return to school, or an alternative diagnosis by a Medical Provider that is submitted to Health Services. Please note that a negative home test cannot be accepted because the specimen cannot be verified. Staff will communicate with their direct supervisor and Health Services to determine next steps.

Students who are feeling ill during the school day will be evaluated by the campus nurse who will consult the parent/guardian to determine if they need to be seen by a medical provider.

Screening Program for COVID-19 On Campus

RISD Campus Nurses are prepared to administer voluntary and consented COVID-19 rapid testing for individual staff and students pending delivery of supplies and directives from the Texas Education Agency.

Positive Case Processing and Quarantine Protocols

RISD Health Services will process positive case reports during regular school days/business days from 8 a.m. – 2 p.m. Any information submitted after 2 p.m. or during the weekend will be processed the following business day. Positive case reports will be processed as follows:

- When a student or staff member has tested positive, the parent or staff member will be asked to provide a copy of the PCR or antigen test results to

Health Services.

- Once the results have been reviewed, Health Services will interview the parent regarding when symptoms began and confirm the dates the student attended school.
- Parents of all students in the positive student's classroom/activities will be notified by email (through Focus) that a person in their classroom/activity has tested positive, potentially exposing other students.
- Parents who receive a potential exposure notification should closely monitor their child for symptoms for 14 days and not send their child to school if experiencing any symptoms.
- If a student who was potentially exposed begins to experience symptoms, that student will be required to quarantine under CDC guidelines.
- If a student who was potentially exposed is not experiencing symptoms, parents may choose, but are not required, to quarantine the student as a preventative measure.
- Any unvaccinated student/ staff member who has a positive person within their household, will be required to quarantine under CDC guidelines.
- Students in athletics/fine arts may have additional UIL guidelines to follow and may receive further instructions from their coach and campus nurse.
- A student with a positive rapid test can be overturned by a negative PCR that is taken within 24 hours of the original rapid test.

Return to Campus from Quarantine

- The CDC recommended quarantine period for exposed people is 14 days.
- Students or staff may choose to return from the 14-day quarantine early if they:

- Take a Rapid Antigen or PCR test on days five, six or seven from their last

exposure and return on day eight with a negative result. Please note that a negative home test cannot be accepted because the specimen cannot be verified.

- Return on day 11, if no symptoms are present during the first 10 days.
- Return on day 15, if no symptoms are present the entire 14 days.

COVID Positive

RISD students and staff who test positive for COVID-19 will not be able to attend in-person school activities and are encouraged to stay home in isolation under CDC guidelines. People who test positive should complete 10 days of isolation counted from the day their symptoms began or 10 days after they tested positive, if they did not experience any symptoms. Campus nurses and RISD Health Services will help staff, parents, and students determine when it is safe to return to campus.

Note: If you believe your child has an existing medical condition that may prevent them from attending school, reach out to our Special Student Services Coordinator, Jessica Garrett for homebound criteria information. Parents needing additional information regarding counselor support or other questions please use the following elementary and secondary hotline available for parents during normal school hours.

Elementary/Secondary Support Hotline: 469-593-0480

RISD Travel Protocols 2021-2022 (for first grading period)

Overnight student travel will be limited at this time. **RISD will reevaluate these guidelines at the beginning of each 9 week grading period**, taking into account the spread of the Covid-19 virus.

- Non-essential overnight student travel will not be permitted at this time, including, but not limited to, elementary camps, and events that are not UIL or required competitions.
- Essential overnight student travel should be limited to no further than 300 miles from RISD.
 - This ensures that parents/guardians can get to their child quickly if needed if COVID-related issues arise.
- If a child becomes symptomatic, a parent/guardian will be expected to come immediately and pick their child up.
- No air travel allowed at this time.
- Students will sleep one person to a bed.
- Trip insurance is strongly encouraged for all students.
- These guidelines are subject to change pending local health guidance and district protocols.

Field trips during the school day are allowable if COVID protocols can be followed. Outdoor trips are encouraged. Large indoor gatherings should be avoided.

Resources

- Center for Disease Control and Prevention – CDC
- Coronavirus Self-Checker – CDC
- 2021 COVID-19 Cumulative Cases by Zip Code as of Sept 3
- TEA Coronavirus (COVID-19) Support and Guidance
- Dallas County Health and Human Services
- Keeping Kids Safe: An Evidence-Based Guide by Dr. Katelyn Jetelina
- Vaccines.gov

Provide Feedback

Please access our Let's Talk Platform to share feedback, comments, and questions about The Blueprint: RISD's Back To School Plan – 2021-2022.

[Provide Feedback](#)

TRANSLATE

Select Language ▼

FOLLOW RISD



QUICK LINKS

[risd.org](https://www.risd.org)

CONTACT US

400 S. Greenville Ave.
Richardson, TX 75081

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to webmaster@risd.org.



90°

TRENDING Cowboys Tonight Rebound: Recipe Oak Cliff COVID-19 Testing COVID-19 Tra...

RICHARDSON ISD

Richardson ISD Keeps Mask Mandate; Rising Cases at 7 Campuses Cause Concern

By Maria Guerrero • Published September 3, 2021 • Updated on September 3, 2021 at 10:26 pm



The Justice Department is suing Texas over a new state law that bans most abortions, arguing that it was enacted "in open defiance of the Constitution."

School leaders and health experts in Richardson agree, students are best served in school.



But what happens when the spread of COVID-19 is out of control?

***Our redesigned local news and weather app is live!
Download it for Apple or Android— and sign up for alerts.***

The rapid increase of cases at one school in the district led officials to quarantine and close an entire campus for 10 days.

The superintendent called an emergency school board meeting to discuss the issue.

Local

The latest news from around North Texas.



25 MINS AGO

Pandemic Gardening Hobby Still Taking Root



32 MINS AGO

North Texas Restaurants, Bars Expect Busy Night with NFL Kickoff Game

Despite some opposition, RISD board members voted Friday to keep the district's mask mandate and safety protocols in place, including contact tracing.

Parents arrived at Brentfield Elementary School on Friday to pick up their child's virtual lesson plan for next week. Students on this campus will return to virtual learning for 10 days, beginning Tuesday.

On Thursday, the district closed Brentfield and canceled Friday classes after reporting 29 COVID-19 cases.

Since the start of the school year, the school has reported 41 cases in all, 29 in just the past 10 days.

District leaders said they called Dallas County health officials to report concerns last week regarding a sudden rise in cases among Brentfield students in second, fifth and sixth grade.

The district, in consultation with health experts, determined its current mitigation strategies were not stopping the spread.

COVID-19 cases and students instructed to quarantine after being in close contact with a COVID-positive classmate led to a 15% absentee rate at Brentfield.

1:43

COVID-19 Cases Causing Problems at North Texas School Districts

The board meeting discussed the closure, COVID-19 cases and held a vote on RISD's mask mandate and safety guidelines.

Superintendent Dr. Jeannie Stone told board members the district has been in constant contact with city and Dallas County health officials, who were in favor of closing the school in order to stop further spread of the virus.

Doctor David Bonnet called into the board meeting on Friday. He has been the city's health advisor for almost 27 years.

One woman who spoke during the public comment period asked the board, "if masks work so well, then why are you continuing to contact trace and now shutdown schools and move them to virtual learning?"

"We've got to keep as many kids in school as we can," he told the board. "Masking does not stop the virus, but it cuts down on the transmission so that we can keep the numbers down."

"The purpose of the mask mandate is to slow the spread," said Bonnett. "You're not going to stop it with masks. A study out of Bangladesh said it was only a 10-20% decrease, but every little bit helps."

RISD had a total of 1,854 positive cases among students last school year, she said.

Trustee Regina Harris asked Jones if she knows what's behind the higher number of cases at Brentfield.

This particular campus was among the first to report a rise in cases, she said.

Jones also informed board members a sixth-grade student who is currently battling coronavirus in the ICU. The district could not confirm whether the student attends Brentfield, citing privacy laws.

When it comes to Brentfield's 15% absentee rate and the subsequent decision to shut down, Jones said the same action would have been recommended had it been flu cases that caused a 15% absentee rate.

As for the high numbers across the district, Jones told board members some schools have reported cases of defiant parents.

"Parents are binding together and not testing on purpose," she said. "They don't want to let us know that they're positive. We're also getting feedback that they're sending their kids, symptomatic. We know this. Some by just not knowing, because sometimes it does present as allergies and then some intentionally because they can't not miss school or because the parent doesn't really perceive it as a threat. So, this is the environment that we are starting out school with."

Brentfield is not the only school considered a 'hotspot for COVID-19 spread' right now.

Jones said they are concerned about seven campuses, including Bowie and Richardson Heights Elementary Schools.

Both Brentfield and Bowie are located in the city of Dallas and are in close proximity to each other.

Bowie is reporting 23 active cases of COVID-19, including five cases added today, said Jones.

If cases continue to increase, it is possible this and other schools may be temporarily closed.

Dr. Bonnet told board members another overarching goal is to keep local hospitals from being overwhelmed with patients, both COVID-19 and not.

When asked about the increasing number of school closures around the state, Texas Classroom Teacher's Association staff attorney Julie Leahy said the start of the school year has been a difficult and stressful time for their members.

While she said teachers remain concerned for their health and their students' health, closures provide a challenge in making up for the substantial loss sustained over the last 18 months.

"That requires a pivot from both the teacher and the students. It is an interruption in instruction and it's disruptive. But at the same time, I think a lot of teachers recognize that it's necessary to keep kids healthy," said Leahy.

As of yesterday, 12 people had to wait for a bed at Richardson Methodist, he announced.

"If the numbers continue to climb, we're going to have to start backing off elective cases again and that means someone with a bad knee, a bad hip is not going to be able to get that taken care of," he said.

Bonnet also told RISD he predicts the coming two to three months will be the 'wild wild west' for school districts grappling with coronavirus cases.

"I think we're going to see big numbers," he said. "I think probably between the 2020-2021 school year, most kids in school under the age of 12 are going to get COVID-19."

Board members voted 7-0 to maintain a mask mandate and safety guidelines.

RISD will take up the issue again at its next meeting on October 4.

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WHAT DO YOU THINK?



Broadly speaking, do you think student- and parent-led protests against mask mandates at public schools will largely be effective or ineffective in the long run?

- ☐ Very effective
- ☐ Somewhat effective
- ☐ Somewhat ineffective
- ☐ Very ineffective
- ☐ Other / No opinion



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KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2021

VIA EMAIL

Dr. Jeannie Stone
Superintendent, Richardson ISD
400 S. Greenville Ave.
Richardson, TX 75081
jeannie.stone@risd.org

Dear Dr. Stone:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>



temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I request your acknowledgement by 5 p.m. Tuesday, August 17, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly stylized font.

KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).



OFFICE OF THE GENERAL COUNSEL
RICHARDSON INDEPENDENT SCHOOL DISTRICT
Where all students learn, grow and succeed

August 17, 2021

Via Email

Hon. Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Paxton:

Your letter to Dr. Jeannie Stone, Superintendent of the Richardson Independent School District (RISD or the District), was referred to me for response. I represent the District. Kindly refer future communications to the attention of the undersigned.

We find your letter confusing and unwarranted. Your letter accuses Dr. Stone of acting in an unlawful manner when she used her professional judgment and discretion to implement a mask mandate to protect students, employees, and visitors in RISD. Dr. Stone's action not only was lawful but also was entirely reasonable in the light of the surging COVID-19 infections in the area. Other local school districts have issued similar mask requirements.

RISD is watching closely the rapidly changing legal landscape concerning the masking issue. You refer to the Orders of the Texas Supreme Court from August 15 in the actions involving Dallas and Bexar Counties regarding the respective county judges' challenges to Executive Order GA-38. The Supreme Court's Orders that stayed those matters did not apply to school districts. Indeed, neither RISD nor any other school district was a party in either proceeding.

Surprisingly, you fail to acknowledge the order from another court that does allow Dr. Stone's action. Specifically, I reference the temporary restraining order from Judge Soifer in the matter of *The Southern Center for Child Advocacy v. Greg Abbott, in his official capacity as Governor of Texas*, Cause No. D-1-GN-21-033792, 53rd Judicial District, Travis County, Texas (SCCA TRO). The SCCA TRO temporarily restrains and enjoins Governor Abbott and his agents "from enforcing the portions of *Executive Order GA-38* regarding face coverings against Texas independent school district." Similarly, in *La Joya Independent School District, et al. v. Greg Abbott, in his official capacity as Governor of Texas*, Cause No. D-1-GN-21-003897, in the 353rd Judicial District, Travis



County, Texas, the court entered an Order Granting Temporary Restraining Order and Request for Judicial Notice (the LaJoya TRO). The LaJoya TRO also temporarily enjoined and restrained Governor Abbott from enforcing GA-38 related to face coverings against public schools in Travis County. When Dr. Stone announced the mask requirement for RISD, she did so in reliance on the SCCA TRO, which remains in effect. Even more important, the Texas Supreme Court already has denied the letter request you filed on August 16, 2021, seeking, *inter alia*, to apply the emergency relief that the Texas Supreme Court granted in the Dallas and Bexar county actions to the SCCA TRO and the La Joya TRO.

The SCCA TRO specifically enjoins the Governor from enforcing provisions of GA-38 regarding face coverings against public school districts. RISD reasonably and in good faith believes that the prohibition in GA-38 concerning mask mandates currently is not enforceable against it or other school districts. RISD is not violating any court order or other applicable order as you accuse and there is no basis to warrant your threatened pursuit of legal actions including sanctions and contempt of court. As it always has, RISD will comply with any applicable orders. If there is additional information about which you believe the District should be aware, please forward it to me so we may properly consider it.

Respectfully,



Mia M. Martin
General Counsel

c: Dr. Jeannie Stone
RISD Board of Trustees

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Bar No. 24100169
Renee.guerrero-adams@oag.texas.gov
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Renee Guerrero-Adams		Renee.Guerrero-Adams@oag.texas.gov	9/14/2021 11:28:45 AM	SENT
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Todd Dickerson		todd.dickerson@oag.texas.gov	9/14/2021 11:28:45 AM	SENT
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Thomas Ray		thomas.ray@oag.texas.gov	9/14/2021 11:28:45 AM	SENT
Bonnie Chester		bonnie.chester@oag.texas.gov	9/14/2021 11:28:45 AM	SENT

Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Round Rock ISD’s mask mandate should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

6. Defendant Round Rock Independent School District (“Round Rock ISD”) has approximately 48,421 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Round Rock ISD is the board of trustees for Round Rock ISD.

8. Defendant Dr. Hafedh Azaiez is the superintendent of Round Rock ISD.

² *Id.* § 418.011.

9. Defendants Amy Weir, Amber Feller, Tiffanie Harrison, Dr. Jun Xiao, Dr. Mary Bone, Cory Vessa, and Danielle Weston are members of the Round Rock ISD Board of Trustees.

10. Defendants may be served with process through Amy Weir, the president of the Round Rock ISD Board of Trustees, or through Dr. Hafeedh Azaiez, the Round Rock ISD superintendent.

JURISDICTION AND VENUE

11. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

12. Venue is proper in Williamson County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State's Emergency Response.

13. Two core purposes of the Texas Disaster Act of 1975 ("TDA") are to: (1) mitigate the "damage, injury, and loss of life and property" resulting from a disaster; and (2) "provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters."³

³ Tex. Gov't Code § 418.002(1), (3).

14. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

15. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

16. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

17. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

¹⁴ *Id.* § 418.108(g).

a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

18. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

19. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

20. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

21. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

22. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure...”²⁰

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ A copy of GA-38 is attached hereto as Exhibit A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at p. 1.

²⁰ *Id.* at pp. 2–3.

23. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

24. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

25. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

26. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

27. GA-38’s prohibition on local officials’ facemask mandates falls comfortably within Governor Abbott’s broad power to “control ingress and egress to

²¹ *Id.* at p. 3

²² *Id.* at pp. 3–4.

²³ *Id.* at p. 4.

²⁴ *Id.* at pp. 3–4.

²⁵ *Id.* at pp. 3–5.

²⁶ *Id.* at pp. 4.

²⁷ *Id.* at pp. 1.

²⁸ *Id.* at pp. 3.

and from a disaster area and the movement of persons and occupancy of premises in the area.”²⁹

28. Specifically, GA-38’s ban on facemask mandates controls “ingress and egress” to, “movement” in, and “occupancy of” a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when “occupying” premises in a disaster area.

III. Round Rock ISD Issues a Facemask Mandate in Defiance of GA-38.

29. On or about August 16, 2021, Round Rock ISD’s Board of Trustees voted to mandate masks for all students, teachers, staff members, and adult visitors beginning August 18, 2021 (“Defendants’ Facemask Order”).³⁰ Round Rock ISD’s Board of Trustees subsequently updated Defendants’ Facemask Order to require individuals seeking an exemption from the policy to submit documentation establishing health or developmental circumstances that warrant excusing them from Defendants’ Facemask Order.³¹

30. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

²⁹ Tex. Gov’t Code § 418.018(c).

³⁰ Round Rock ISD NEWS: Masks to be temporarily required at all Round Rock ISD schools and facilities (August 17, 2021; updated on or about August 25, 2021), *available at* <https://news.roundrockisd.org/2021/08/17/masks-to-be-temporarily-required-at-all-round-rock-isd-schools-and-facilities/> (last visited September 9, 2021). A copy of this webpage is attached hereto as Exhibit B.

³¹ *Id.*

31. On August 17, 2021, the Office of Attorney General sent a letter to Round Rock ISD Superintendent Azaiez, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter requested an acknowledgment “that in light of the [Texas Supreme] Court’s rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor’s order and protect the rule of law.”³²

32. As of September 9, 2021, Round Rock ISD and Superintendent Azaiez have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office, and furthermore, they have indicated their intent to continue defying GA-38.³³

CLAIMS FOR RELIEF

33. Pursuant to Texas’s Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

34. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts’ general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts’ general authority and GA-38’s specific prohibition, GA-38’s specific prohibition controls. Therefore, the State requests a

³² Exhibit C (Aug. 17, 2021 letter to Dr. Azaiez).

³³ See Ex. B.

declaration that the enactment and enforcement of Defendants’ Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

**APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER
AND A TEMPORARY INJUNCTION**

35. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.³⁴ “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”³⁵ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.³⁶ These requirements are readily met here.

I. The State will Likely Succeed on the Merits.

36. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants’ Facemask Order and (2) Governor Abbott lawfully suspended Defendants’ statutory authority to issue their Facemask Order.

A. GA-38 Expressly Preempts Defendants’ Facemask Order.

37. The point is simple. Governor Abbott’s emergency orders carry the force and effect of law.³⁷ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively “state laws.” Traditional

³⁴ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

³⁵ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

³⁶ *Id.*

³⁷ Tex. Gov’t Code § 418.012.

preemption principles dictate that when a state law conflicts with a local law, the state law controls.³⁸

38. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.³⁹ Defendants’ Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by, GA-38. As such, Defendants’ Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

39. A review of the Legislature’s intent, which is a focus of a preemption analysis,⁴⁰ supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

40. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴¹ (2) that explicitly carry the force and effect of *state* laws.⁴² Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁴³ Further, the Governor is the only one with the emergency powers to suspend laws;⁴⁴ use all

³⁸ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

³⁹ Ex. A at pp. 3–4.

⁴⁰ *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

⁴¹ See Tex. Gov’t Code §§ 418.014–.015.

⁴² *Id.* § 418.012.

⁴³ *Id.* § 418.011.

⁴⁴ *Id.* § 418.016(a).

available public resources, including resources of cities and counties;⁴⁵ and control the movement of persons and occupancy of premises on a statewide level.⁴⁶ The Legislature's intent is clear. In the event of a conflict, Governor Abbott's emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

41. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁴⁷ But here harmonization *is* possible: school districts' general authority is not abolished, but merely circumscribed, by GA-38's prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁴⁸ so too does that general authority not exempt a school district from complying with GA-38. GA-38's ban on mask mandates functions as a particular limit on school districts' general authority.

42. The TDA reflects the Legislature's comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁴⁹ In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

43. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the

⁴⁵ *Id.* § 418.017.

⁴⁶ *Id.* § 418.018.

⁴⁷ *See, e.g., id.* § 311.026.

⁴⁸ *See Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

⁴⁹ *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) ("Nobody can question that the public schools of this state 'are quasi public entities and are subject to direct statutory control' by the Legislature.").

emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.⁵⁰ And if the Governor’s orders under the TDA could not preempt school district rules, then county judges’ and city mayors’ orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State’s response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA, and it is not the law.

44. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

45. Governor Abbott, using his TDA-granted power,⁵¹ suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵² Under the circumstances, Defendants had no authority to

⁵⁰ See Tex. Gov’t Code § 418.108.

⁵¹ TEX. GOV’T CODE § 418.016(a).

⁵² Ex. A at ¶ 5.

issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

46. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁵³ That court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means of rules and regulations.”⁵⁴ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁵⁵

47. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁵⁶ The court reasoned that “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁵⁷ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁵⁸ The El Paso Court of Appeals’ reasoning applies equally here.

48. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

⁵³ 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

⁵⁴ *Id.* at 824 (citing various dictionaries).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁵⁸ *Id.*

49. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

II. The State will be Irreparably Injured Absent an Injunction.

50. The State’s injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁵⁹

51. There, the Court explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”⁶⁰ The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s control over local officials who are misapplying or defying State laws.⁶¹ The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”⁶²

52. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”⁶³ The Court found that, “[w]hen the State files suit to enjoin *ultra vires* action by a local

⁵⁹ 620 S.W.3d 400, 410 (Tex. 2020).

⁶⁰ *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”⁶⁴

53. Per *Hollins*, the irreparable injury requirement favors the State.

54. The El Paso Court of Appeals rightly viewed *Hollins* “as controlling” on the irreparable injury issue.⁶⁵

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

55. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁶⁶ There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

56. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials’ attempt to usurp the Governor’s power to control the direction of the State’s response to the COVID-19 pandemic. The status quo favors the State.

57. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38’s ban on facemask mandates.⁶⁷ Each time, the Court overturned these injunctions because they altered the status quo.⁶⁸

⁶⁴ *Id.*

⁶⁵ *El Paso County*, 618 S.W.3d at 826.

⁶⁶ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

⁶⁷ See Exhibits D–F.

⁶⁸ *Id.*

58. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁶⁹ The Court explained that these facemask cases turn on a pure legal question: “[W]hich government officials have the legal authority to decide what the government’s position on [facemasks] will be.”⁷⁰ The Court continued: “The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels.”⁷¹ The Court held that the status quo of “gubernatorial oversight” of disaster-related decisions “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.”⁷²

59. Texas Supreme Court precedent requires that this Court enjoin Defendants’ Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

60. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

61. For the reasons discussed above, the State respectfully prays that this Court:

⁶⁹ Ex. F.

⁷⁰ *Id.* at ¶ 2.

⁷¹ *Id.*

⁷² *Id.*

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants' Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State's application for a temporary injunction;
- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and
- H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
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ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

V.

ROUND ROCK INDEPENDENT SCHOOL DISTRICT, BOARD OF TRUSTEES OF ROUND ROCK INDEPENDENT SCHOOL DISTRICT, DR. HAFEDH AZAIEZ in his official capacity as superintendent of the Round Rock Independent School District, and AMY WEIR, AMBER FELLER, TIFFANIE HARRISON, DR. JUN XIAO, DR. MARY BONE, CORY VESSA, and DANIELLE WESTON, in their official capacities as trustees of the Round Rock Independent School District,

Defendants.

IN THE DISTRICT COURT

WILLIAMSON COUNTY, TEXAS

JUDICIAL DISTRICT

**DECLARATION OF KIMBERLY GDULA IN SUPPORT OF THE STATE OF TEXAS'S
VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Kimberly Gdula, my date of birth is October 27, 1982, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency

orders in question and other publicly available materials which this Court will be able to take judicial notice of.

Executed in Travis County, State of Texas, on the 9th day of September 2021.

A handwritten signature in dark ink, appearing to read 'K. Gdula', written in a cursive style.

Kimberly Gdula



GOVERNOR GREG ABBOTT

July 29, 2021

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SECRETARY OF STATE

3:15 PM O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

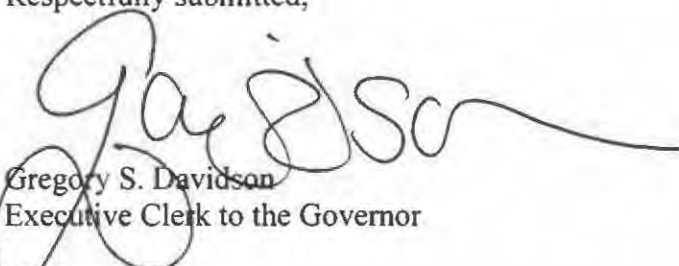
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

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and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
 - a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

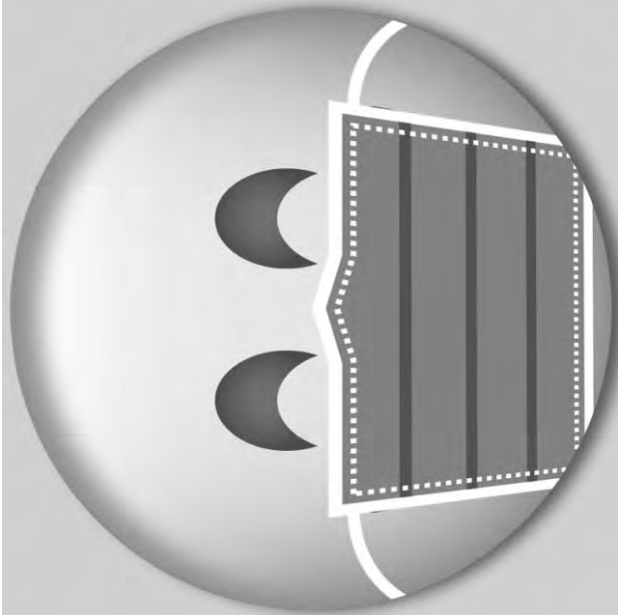
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Masks to be temporarily required at all Round Rock ISD schools and facilities

Aug 17, 2021



UPDATE: The Board of Trustees approved to update the District's mask requirement during their Aug.25 called meeting. All students, teachers, staff members and adult visitors, including Trustees, must wear masks on buses and while inside school buildings when six feet of distance cannot be maintained. Students and staff have the option to remove their masks while seated in cafeterias and staff lunchrooms and while outdoors. Masks may be removed for activities during athletics, fine arts, and physical education classes if deemed appropriate by the coach, director or instructor. Individuals with health or

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developmental circumstances may opt-out by submitting documentation.

Starting Wednesday, Aug. 18, masks will temporarily be required at all Round Rock ISD schools and facilities, following approval by the [Board of Trustees during their Aug. 16 called meeting](#).

The requirement expires on September 17, 2021. The Board's regular monthly meeting is scheduled for September 16, 2021, and the Trustees could vote to extend the requirement at that time if conditions warrant.

Under the District's new mask protocol, all students, teachers, staff members and adult visitors, including Trustees, must wear masks on buses and while inside school buildings when six feet of distance cannot be maintained. Students and staff have the option to remove their masks while seated in cafeterias and staff lunch rooms and while outdoors. The requirement is not effective during athletics, fine arts, and physical education classes unless deemed appropriate by the coach, director or instructor.

"My ultimate responsibility is the health and welfare of our students. We must look at the science, listen to the experts, and do what is right to protect them. As several other superintendents who have made the decision to require masks have said, if we're going to err, I want to err on the side of caution," Superintendent of Schools Dr. Hafeeth Azaiez said. "As the public health climate continues to rapidly change, we must be willing to adapt and make decisions to protect our community as we know that masks are an essential tool in reducing the spread of COVID-19."

Local health authorities from Travis and Williamson counties, and the [Centers for Disease Control and Prevention](#), recommend that students, staff, and visitors wear masks at school to mitigate current community spread of COVID-19, particularly considering the disease's heightened transmission and infection rate primarily caused by the more transmissible "Delta" variant. Also, the [American Academy of Pediatrics](#) recommends everyone older than the age of two wear a mask in schools regardless of vaccination status. Currently, local and federal health officials emphasize that masks are the most effective strategy to reduce the chances of transmission and slow the virus' spread.

While [Gov. Greg Abbott issued Executive Order GA No. 36](#) earlier this year, which prohibited schools from issuing a mask mandate, several districts across the state have decided to require masks and legal challenges to the governor's order are ongoing. Last school year, Round Rock ISD required masks throughout the year and saw a lower positivity rate inside its schools than in the community at large.

We understand that this development may affect families' decisions regarding in-person learning. Families who are currently enrolled in the [District's virtual learning program](#) and wish to transition back to on-campus learning may do so by contacting their home campus registrar's office. Round Rock ISD's current COVID-19 protocols are designed with the guidance of local health agencies and in consideration of the current and developing public health climate. Round Rock ISD will reassess conditions frequently and adjust accordingly.

Los cubrebocas serán requeridos temporalmente en todas las escuelas e instalaciones de Round Rock ISD

ACTUALIZACIÓN: La Mesa Directiva aprobó actualizar el requisito de máscaras del Distrito durante su reunión convocada el 25 de agosto. Todos los estudiantes, maestros, miembros del personal y visitantes adultos, incluidos los Fideicomisarios, deben usar máscaras en los autobuses y dentro de los edificios

escolares cuando no se pueda mantener una distancia de seis pies. Los estudiantes y el personal tienen la opción de quitarse las máscaras mientras están sentados en las cafeterías y los comedores del personal y al aire libre. Las máscaras se pueden quitar para actividades durante las clases de atletismo, bellas artes y educación física si el entrenador, director o instructor lo considera apropiado. Las personas con circunstancias de salud o desarrollo pueden optar por no participar enviando documentación.

A partir del miércoles 18 de agosto, se requerirán máscaras temporalmente en todas las escuelas e instalaciones de Round Rock ISD, luego de la aprobación de la Junta de Fideicomisarios durante su [reunión convocada](#) el 16 de agosto.

El requisito expira el 17 de septiembre de 2021. La reunión mensual regular de la Junta está programada para el 16 de septiembre de 2021, y los Fideicomisarios podrían votar para extender el requisito en ese momento si las condiciones lo justifican.

Bajo el nuevo protocolo de máscaras del Distrito, todos los estudiantes, maestros, miembros del personal y visitantes adultos, incluidos los Fideicomisarios, deben usar máscaras en los autobuses y dentro de los edificios escolares cuando no se pueda mantener una distancia de seis pies. Los estudiantes y el personal tienen la opción de quitarse las máscaras mientras comen y beben y mientras están al aire libre. El requisito no es efectivo durante las clases de atletismo, bellas artes y educación física a menos que el entrenador, director o instructor lo considere apropiado.

“Mi máxima responsabilidad es la salud y el bienestar de nuestros estudiantes. Debemos examinar la ciencia, escuchar a los expertos y hacer lo correcto para protegerlos. Como han dicho otros superintendentes que han decidido requerir cubrebocas, si vamos a errar, quiero errar por el lado de la precaución”, dijo el Dr. Hafeeth Azaiez, Superintendente de Escuelas. “Conforme el ambiente de salud pública continúa cambiando rápidamente, debemos estar dispuestos a adaptarnos y tomar decisiones para proteger a nuestra comunidad, ya que sabemos que los cubrebocas son una herramienta esencial para reducir la propagación del COVID-19”.

Las autoridades de salud locales en los condados de Travis y Williamson, y los [Centros para el Control y la Prevención de Enfermedades](#) (CDC-siglas en inglés), recomiendan que los estudiantes, el personal y los visitantes usen el cubrebocas en la escuela para mitigar la propagación actual del COVID-19 en la comunidad, sobre todo teniendo en cuenta el aumento de la transmisión de la enfermedad y la tasa de infección causado principalmente por la variante “Delta”, más transmisible. Además, la [Academia Estadounidense de Pediatría](#) recomienda que todos los mayores de dos años usen cubrebocas en las escuelas, independientemente de su estado de vacunación. Actualmente, los funcionarios de salud locales y federales insisten que los cubrebocas son la estrategia más efectiva para reducir las posibilidades de transmisión y frenar la propagación del virus.

Mientras que el gobernador Greg Abbott emitió la Orden Ejecutiva [GA No. 36](#) a principios de este año, que prohibía a las escuelas obligar el uso de cubrebocas, varios distritos en todo el estado han decidido requerir el cubrebocas y los desafíos legales a la orden del gobernador están en curso. El año pasado, Round Rock ISD requirió cubrebocas durante todo el año escolar y vio una tasa de casos positivos, más baja dentro de sus escuelas que en la comunidad en general.

Entendemos que este desarrollo puede afectar las decisiones de las familias con respecto al aprendizaje en persona. Las familias que actualmente están inscritas en el [Programa de Aprendizaje Virtual del Distrito](#) y desean hacer la transición de regreso al aprendizaje en la escuela pueden hacerlo comunicándose con la oficina de registro de su escuela de origen.

Los [protocolos actuales del COVID-19](#) de Round Rock ISD están diseñados con la orientación de las agencias de salud locales y teniendo en cuenta el ambiente de salud pública actual y en desarrollo. Round Rock ISD reevaluará las condiciones con frecuencia y se ajustará en consecuencia.

SHARE:



Dr. Zac Oldham named Area Superintendent of Westwood Learning Community



Virtual Learning Program first day moved to Aug. 25

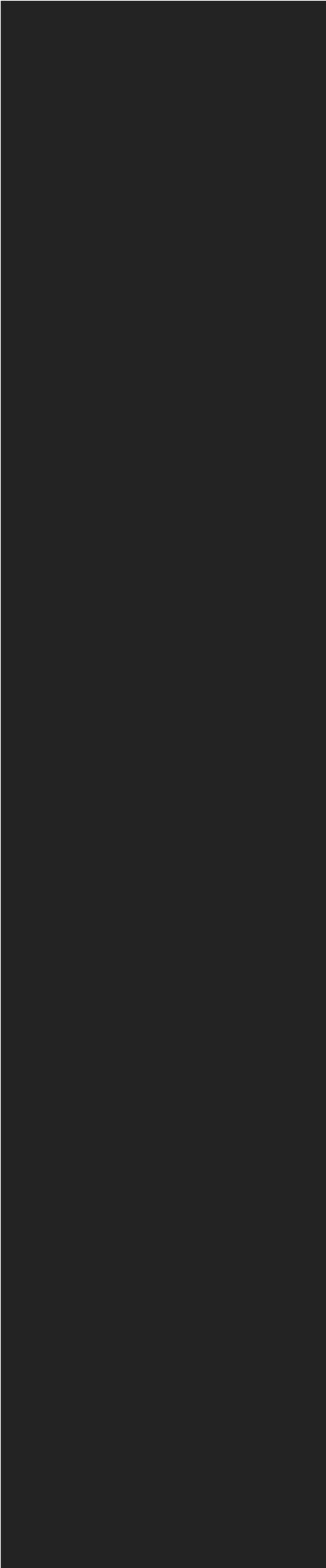




EXHIBIT C

August 17, 2021

VIA EMAIL

Dr. Hafeedh Azaiez
Superintendent, Round Rock ISD
1311 Round Rock Ave.
Round Rock, TX 75081
superintendent_rrisd@roundrockisd.org

Dear Dr. Azaiez:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>

temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I request your acknowledgement by 5 p.m. Tuesday, August 17, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly stylized font.

KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).

EXHIBIT D

IN THE SUPREME COURT OF TEXAS

No. 21-0687

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

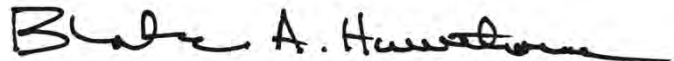
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT E

IN THE SUPREME COURT OF TEXAS

No. 21-0686

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

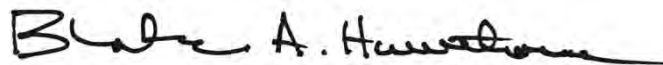
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT F

IN THE SUPREME COURT OF TEXAS

No. 21-0720

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

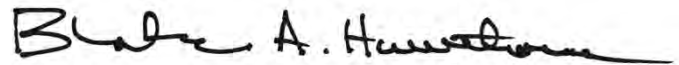
1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.

EXHIBIT D

Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Bonnie Chester on behalf of Kimberly Gdula
Bar No. 24052209
bonnie.chester@oag.texas.gov
Envelope ID: 57115144
Status as of 9/10/2021 8:12 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Hilton		christopher.hilton@oag.texas.gov	9/9/2021 8:51:23 PM	SENT
Tamera Martinez		tamera.martinez@oag.texas.gov	9/9/2021 8:51:23 PM	SENT
Kimberly Gdula		Kimberly.Gdula@oag.texas.gov	9/9/2021 8:51:23 PM	SENT
Bonnie Chester		bonnie.chester@oag.texas.gov	9/9/2021 8:51:23 PM	SENT

Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Elgin ISD’s mask mandate should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

4. The State is only seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

6. Defendant Elgin Independent School District (“Elgin ISD”) has approximately 4,500 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Elgin ISD is the board of trustees for Elgin ISD.

8. Defendant Dr. Jodi Duron is the superintendent of Elgin ISD.

² *Id.* § 418.011.

9. Defendants Byron Mitchel, Beth Walterscheidt, Angie Edmon, Juanita Valarie Neidig, Pete Bega, JD Harkins, and David Glass are members of the Elgin ISD Board of Trustees.

10. Defendants may be served with process through Dr. Jodi Duron, the president of the Elgin ISD Board of Trustees, or through Dr. Jodi Duron, the Elgin ISD superintendent.

JURISDICTION AND VENUE

11. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

12. Venue is proper in Bastrop County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State's Emergency Response.

13. Two core purposes of the Texas Disaster Act of 1975 ("TDA") are to: (1) mitigate the "damage, injury, and loss of life and property" resulting from a disaster; and (2) "provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters."³

³ Tex. Gov't Code § 418.002(1), (3).

14. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

15. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

16. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

17. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

¹⁴ *Id.* § 418.108(g).

a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

18. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

19. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

20. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

21. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

22. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure.”²⁰

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ Ex. A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at 1.

²⁰ *Id.* at 2–3.

23. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

24. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

25. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

26. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

27. GA-38’s prohibition on local officials’ facemask mandates falls comfortably within Governor Abbott’s broad power to “control ingress and egress to

²¹ *Id.* at 3

²² *Id.* at 3–4.

²³ *Id.* at 4.

²⁴ *Id.* at 3–4.

²⁵ *Id.* at 3–5.

²⁶ *Id.* at 4.

²⁷ *Id.* at 1.

²⁸ *Id.* at 3.

and from a disaster area and the movement of persons and occupancy of premises in the area.”²⁹

28. Specifically, GA-38’s ban on facemask mandates controls “ingress and egress” to, “movement” in, and “occupancy of” a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when “occupying” premises in a disaster area.

III. Elgin ISD Issues a Facemask Mandate in Defiance of GA-38.

29. On or about August 16, 2021, Elgin ISD mandated masks for all students and visitors (“Defendants’ Facemask Order”).³⁰

30. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19. Elgin ISD must conform its conduct to the requirements of state law, including GA-38’s prohibition on mask mandates.

31. On August 17, 2021, the Office of Attorney General sent a letter to Elgin ISD Superintendent Duron, warning that the imposition of the mask mandate exceeded her authority and violated GA-38.³¹ The letter stated: “You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott’s Executive Order GA-38.”³² Additionally, the letter warned of potential legal action.

²⁹ Tex. Gov’t Code § 418.018(c).

³⁰ Ex. G (“Elgin ISD Mask Order”); Ex. H (“Elgin ISD Mask Mandate Letter to Parents”).

³¹ Ex. E (“OAG Letter to Elgin ISD”).

³² *Id.*

32. Dr. Duron replied on the same day, August 17, 2021, penning a letter that acknowledged GA-38, attacked Attorney General Paxton, and explicitly indicated her intention to continue mandating masks at Elgin ISD.³³

33. As of September 10, 2021, Elgin ISD and Superintendent Duron have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton's office, and furthermore, they have indicated their intent to continue flagrantly defying GA-38.

CLAIMS FOR RELIEF

34. Pursuant to Texas's Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

35. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts' general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts' general authority and GA-38's specific prohibition, GA-38's specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants' Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION

36. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.³⁴ "A

³³ Ex. F ("Elgin ISD Response to OAG").

³⁴ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”³⁵ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.³⁶ These requirements are readily met here.

I. The State will Likely Succeed on the Merits.

37. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants’ Facemask Order and (2) Governor Abbott lawfully suspended Defendants’ statutory authority to issue their Facemask Order.

A. GA-38 Expressly Preempts Defendants’ Facemask Order.

38. The point is simple. Governor Abbott’s emergency orders carry the force and effect of law.³⁷ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively “state laws.” Traditional preemption principles dictate that when a state law conflicts with a local law, the state law controls.³⁸

39. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.³⁹ Defendants’ Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by,

³⁵ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

³⁶ *Id.*

³⁷ Tex. Gov’t Code § 418.012.

³⁸ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

³⁹ Ex. A at ¶¶ 3–5.

GA-38. As such, Defendants' Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

40. A review of the Legislature's intent, which is a focus of a preemption analysis,⁴⁰ supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

41. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴¹ (2) that explicitly carry the force and effect of *state* laws.⁴² Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁴³ Further, the Governor is the only one with the emergency powers to suspend laws;⁴⁴ use all available public resources, including resources of cities and counties;⁴⁵ and control the movement of persons and occupancy of premises on a statewide level.⁴⁶ The Legislature's intent is clear. In the event of a conflict, Governor Abbott's emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

42. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁴⁷ But here

⁴⁰ *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

⁴¹ See Tex. Gov't Code §§ 418.014–.015.

⁴² *Id.* § 418.012.

⁴³ *Id.* § 418.011.

⁴⁴ *Id.* § 418.016(a).

⁴⁵ *Id.* § 418.017.

⁴⁶ *Id.* § 418.018.

⁴⁷ See, e.g., Tex. Gov't Code § 311.026.

harmonization *is* possible: school districts' general authority is not abolished, but merely circumscribed, by GA-38's prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁴⁸ so too does that general authority not exempt a school district from complying with GA-38. GA-38's ban on mask mandates functions as a particular limit on school districts' general authority.

43. The TDA reflects the Legislature's comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁴⁹ In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

44. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.⁵⁰ And if the Governor's orders under the TDA could not preempt school district rules, then county judges' and city mayors' orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local

⁴⁸ See *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

⁴⁹ *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) (“Nobody can question that the public schools of this state ‘are quasi public entities and are subject to direct statutory control’ by the Legislature.”).

⁵⁰ See Tex. Gov't Code § 418.108.

emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State’s response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA and it is not the law.

45. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

46. Governor Abbott, using his TDA-granted power,⁵¹ suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵² Under the circumstances, Defendants had no authority to issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

47. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁵³ The court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means

⁵¹ TEX. GOV’T CODE § 418.016(a).

⁵² Ex. A at ¶ 5.

⁵³ 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

of rules and regulations.”⁵⁴ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁵⁵

48. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁵⁶ The court reasoned that, “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁵⁷ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁵⁸ The El Paso Court of Appeals’ reasoning applies equally here.

49. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

50. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

⁵⁴ *Id.* at 824 (citing various dictionaries).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁵⁸ *Id.*

II. The State will be Irreparably Injured Absent an Injunction.

51. The State's injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁵⁹

52. There, the Court explained that a century's worth of precedent establishes "the State's 'justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.'"⁶⁰ The Court noted that an *ultra vires* suit is a necessary tool to reassert the State's control over local officials who are misapplying or defying State laws.⁶¹ The Court reasoned: "[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official's specific unauthorized actions."⁶²

53. The Court continued that "[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial."⁶³ The Court found that, "[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction."⁶⁴

54. Per *Hollins*, the irreparable injury requirement favors the State.

55. The El Paso Court of Appeals rightly viewed *Hollins* "as controlling" on the irreparable injury issue.⁶⁵

⁵⁹ 620 S.W.3d 400, 410 (Tex. 2020).

⁶⁰ *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *El Paso County*, 618 S.W.3d at 826.

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

56. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁶⁶ There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

57. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials’ attempt to usurp the Governor’s power to control the direction of the State’s response to the COVID-19 pandemic. The status quo favors the State.

58. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38’s ban on facemask mandates.⁶⁷ Each time, the Court overturned these injunctions because they altered the status quo.⁶⁸

59. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁶⁹ The Court explained that these facemask cases turn on a pure legal question: “[W]hich government officials have the legal authority to decide what the government’s position on [facemasks] will be.”⁷⁰ The Court continued: “The status quo, for many months, has been gubernatorial oversight

⁶⁶ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

⁶⁷ See Exs. B–C.

⁶⁸ *Id.*

⁶⁹ Ex. D.

⁷⁰ *Id.* at ¶ 2.

of such decisions at both the state and local levels.”⁷¹ The Court held that the status quo of “gubernatorial oversight” of disaster-related decisions “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.”⁷²

60. Texas Supreme Court precedent requires that this Court enjoin Defendants’ Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

61. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

62. For the reasons discussed above, the State respectfully prays that this Court:

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants’ Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State’s application for a

⁷¹ *Id.*

⁷² *Id.*

temporary injunction;

- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and
- H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief, General Litigation Division

/s/ Daniel Abrahamson
DANIEL ABRAHAMSON
Texas Bar No. 24082598
CHRISTOPHER D. HILTON
Texas Bar No. 24087727
Assistant Attorney General
Office of the Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548
(512) 936-1675 PHONE
(512) 320-0667 FAX
Daniel.Abrahamson@oag.texas.gov

Christopher.Hilton@oag.texas.gov

ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,

Plaintiff,

V.

ELGIN INDEPENDENT
SCHOOL DISTRICT, BOARD OF
TRUSTEES OF ELGIN
INDEPENDENT SCHOOL
DISTRICT, DR. JODI DURON in
her official capacity as
superintendent of the Elgin
Independent School District, and
BYRON MITCHELL, BETH
WALTERSCHEIDT, ANGIE
EDMON, JUANITA VALARIE
NEIDIG, PETE BEGA, JD
HARKINS, and DAVID GLASS in
their official capacities as trustees
of the Elgin Independent School
District,

Defendants.

IN THE DISTRICT COURT

BASTROP COUNTY, TEXAS

____ JUDICIAL DISTRICT

**DECLARATION OF DANIEL ABRAHAMSON IN SUPPORT OF THE STATE OF TEXAS'S
VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Daniel Abrahamson, my date of birth is April 16, 1983, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency orders in question and other publicly available materials which this Court will be

able to take judicial notice of.

Executed in Travis County, State of Texas, on the 10th day of September 2021.

/s/ Daniel Abrahamson

Declarant

EXHIBIT A



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15 PM O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

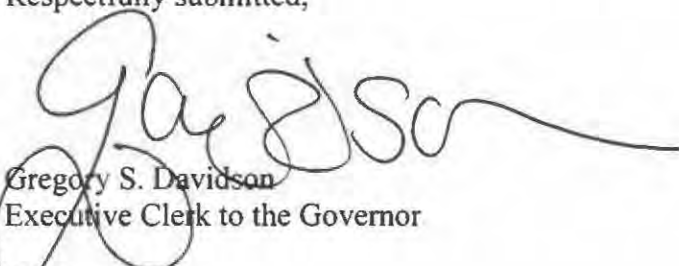
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

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SECRETARY OF STATE
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JUL 29 2021

and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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SECRETARY OF STATE
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JUL 29 2021

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in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.

- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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SECRETARY OF STATE
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JUL 29 2021

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4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
 - a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink, appearing to read "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink, appearing to read "Joe A. Esparza".
JOE A. ESPARZA
Deputy Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

EXHIBIT B

IN THE SUPREME COURT OF TEXAS

No. 21-0687

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

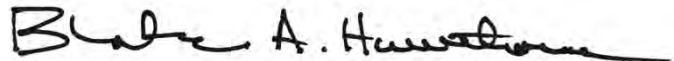
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT C

IN THE SUPREME COURT OF TEXAS

No. 21-0686

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

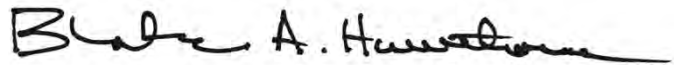
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT D

IN THE SUPREME COURT OF TEXAS

No. 21-0720

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

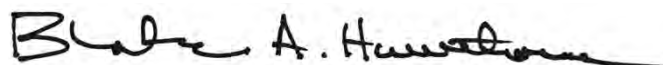
1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.

EXHIBIT D

Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT E



August 17, 2021

VIA EMAIL

Dr. Jodie Duron
Superintendent, Elgin ISD
1002 N. Avenue C
Elgin, TX 78621
jodi.duron@elginisd.net

Dear Dr. Duron:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>

temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I request your acknowledgement by 5 p.m. Tuesday, August 17, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly stylized font.

KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).

EXHIBIT F



August 17, 2021

Dear Mr. Paxton:

I have received your letter regarding the District's local decision regarding face coverings in Elgin Independent School District. You claim that the District has exceeded its authority under Governor Abbott's Executive Order GA-38 and claims that "[c]ourts have previously agreed."

Your letter, however, overlooks the current legal landscape entirely. As you undoubtedly know, there is a Temporary Restraining Order (TRO) in place in Cause No. D-1-GN-21-003792; *The Southern Center for Child Advocacy v. Abbott*; pending in the 53rd Judicial District Court of Travis County that applies statewide. It clearly states that "the Governor and his agents are temporarily restrained and enjoined from enforcing the portions of Executive Order GA-38 regarding face coverings against Texas independent school districts."

As attorney general, you are an agent of the governor, and your letter attempts to enforce Executive Order GA-38 in violation of this TRO, which has not been overturned by the Texas Supreme Court nor any other court of law in the state of Texas as of the date of your letter. This is targeted misinformation meant to play on individual voters' political beliefs or fears. It is not based in fact nor in law. While you are quick to threaten sanctions and contempt of court against Elgin ISD, you wholly fail to recognize your obligation to comply with the TRO from the 53rd Judicial District Court of Travis County—not to mention the consequences stemming from your failure to do so.

You recently tweeted: "A wave of lawlessness is sweeping over #Texas. I will stop it."¹ However, the "lawlessness" is of your own doing by spreading false information about the current state of GA-38. With so many legal and political wheels turning at such high speed, I find it completely unacceptable that you would employ such tactics to push false information. This behavior does little more than demonize public school leaders who are working to do the best for our students but often have the least political leverage.

Elgin ISD has elected in the best interests of its students to follow CDC guidance for masks. The guidance from the Center for Disease Control and Prevention (CDC) "recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status," due to the circulating and highly contagious Delta variant.² I will continue to monitor local health data and the ever-changing legal landscape, and I will continue to make the best decisions I can for the Elgin ISD community.

Sincerely,

Dr. Jodi Duron
Elgin ISD Superintendent

¹ Link: <https://twitter.com/KenPaxtonTX/status/1427375713926139907>.

² The August 5, 2021 Texas Education Agency Public Health Guidance also cites to CDC guidance. Link: <https://tea.texas.gov/sites/default/files/covid/SY-20-21-Public-Health-Guidance.pdf>. Elgin ISD has two schools located in Travis County. Travis County has also enacted recent orders based on the guidance based on recommendations of the Austin-Travis County Health Authority that follow the CDC guidance.

EXHIBIT G



August 16, 2021

Dear Elgin ISD Family and Staff,

The District has made the decision to mandate masks for all students and staff, effective August 17, 2021, on the first day of school.

This decision was made with careful thought and consideration of the various masking orders by both the Governor of Texas and Travis County Officials, as well as the surge of COVID-19 cases, and our commitment to protect the health and well-being of all students and staff.

Our priority is and has been to return students to school, in-person 100%. To do so safely, we will enforce the wearing of masks until further notice.

Sincerely,

Dr. Jodi Duron
Elgin ISD Superintendent

EXHIBIT H



August 17, 2021

Dear Elgin ISD Families and Staff,

Last night the District announced that masks would be required for all students, staff, parents, and visitors in Elgin ISD buildings and on buses “effective immediately” and “until further notice.” I recognize that the timing of this announcement was not ideal; however, we remain fluid in our decision-making based on the current conditions we find ourselves in.

This specific decision was made after reviewing the status of various legal orders from entities that have jurisdiction over Elgin ISD, CDC guidance, local health authority recommendations, and in consultation with the District’s legal counsel, as well as considering the safety and well-being of our students and staff.

I want to be clear that EISD’s mask mandate is lawful and does not violate any order currently governing the District. The Governor of Texas has issued an Executive Order that indicates schools and other governmental entities may not require masks to be worn. However, on August 11 and 13, Travis County Judge Andy Brown issued orders requiring face coverings for all students, staff, and visitors over the age of two (2) while on school property or school buses during Stages 3, 4, or 5, as set for in the Austin Public Health’s Risk-Based Chart. Soon after, on August 15, 2021, two court orders were issued by Travis County District Court Judge Jan Soifer that temporarily prohibit the Governor of Texas from enforcing his order which prohibits school district’s from requiring masks.

Thus, with Governor Abbott’s order suspended in Travis County and across the state, and a valid court order requiring all schools within Travis County to require masks, Elgin ISD made the decision to require masks in all EISD buildings and buses.

I understand how frustrating this situation is to many of you. It is frustrating to me, the Board of Trustees, and the staff to be caught in a political battle between various governmental entities. I urge you to show patience and grace to District staff and each other as we navigate this uncertain time. With this ever-changing landscape, you can expect to receive more communication from me on this issue as the situation evolves.

In the meantime, please continue to refer to our Return to Learn Plan, which outlines other safety protocols we are implementing to ensure the safety of our students and staff.

Our greatest strength in Elgin ISD is our sense of community and support for each other – our One Town, One Team, One Town mentality. Although I recognize that there are differing opinions on the use of masks, I am hopeful that we will pull together as a community during these times, think of others before ourselves, and be respectful of one another.

As we continue our important work, I know that with your support, our students will be successful. I look forward to the great things that will happen in Elgin ISD this year!

Sincerely,
Dr. Jodi Duron
Elgin ISD Superintendent

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Rudy Limas on behalf of Daniel Abrahamson
Bar No. 24082598
rudy.limas@oag.texas.gov
Envelope ID: 57152486
Status as of 9/13/2021 11:03 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Daniel Abrahamson		daniel.abrahamson@oag.texas.gov	9/10/2021 4:24:11 PM	SENT
Kimberly Gdula		Kimberly.Gdula@oag.texas.gov	9/10/2021 4:24:11 PM	SENT
Christopher Hilton		christopher.hilton@oag.texas.gov	9/10/2021 4:24:11 PM	SENT
Rudy Limas		Rudy.Limas@oag.texas.gov	9/10/2021 4:24:11 PM	SENT

JUDICIAL DISTRICT

boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Galveston ISD’s mask mandate should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

6. Defendant Galveston Independent School District (“Galveston ISD”) has approximately 6,708 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Galveston ISD is the board of trustees for Galveston ISD.

8. Defendant Dr. Jerry Gibson is the superintendent of Galveston ISD.

² *Id.* § 418.011.

9. Defendants Anthony Brown, David H. O’Neal, Jr., Johnny Smecca, Mindy Lakin, Shae Jobe, and Ann Masel are members of the Galveston ISD Board of Trustees.

10. Defendants may be served with process through Anthony Brown, the president of the Galveston ISD Board of Trustees, or through Dr. Jerry Gibson, the Galveston ISD superintendent.

JURISDICTION AND VENUE

11. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

12. Venue is proper in Galveston County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State’s Emergency Response.

13. Two core purposes of the Texas Disaster Act of 1975 (“TDA”) are to: (1) mitigate the “damage, injury, and loss of life and property” resulting from a disaster; and (2) “provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”³

³ Tex. Gov’t Code § 418.002(1), (3).

14. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

15. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

16. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

17. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

¹⁴ *Id.* § 418.108(g).

a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

18. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

19. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

20. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

21. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

22. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure...”²⁰

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ A copy of GA-38 is attached hereto as Exhibit A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at p. 1.

²⁰ *Id.* at pp. 2–3.

23. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

24. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

25. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

26. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

27. GA-38’s prohibition on local officials’ facemask mandates falls comfortably within Governor Abbott’s broad power to “control ingress and egress to

²¹ *Id.* at p. 3

²² *Id.* at pp. 3–4.

²³ *Id.* at p. 4.

²⁴ *Id.* at pp. 3–4.

²⁵ *Id.* at pp. 3–5.

²⁶ *Id.* at pp. 4.

²⁷ *Id.* at pp. 1.

²⁸ *Id.* at pp. 3.

and from a disaster area and the movement of persons and occupancy of premises in the area.”²⁹

28. Specifically, GA-38’s ban on facemask mandates controls “ingress and egress” to, “movement” in, and “occupancy of” a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when “occupying” premises in a disaster area.

III. Galveston ISD Issues a Facemask Mandate in Defiance of GA-38.

29. On or about August 13, 2021, Galveston ISD announced that it would mandate masks for all students and staff when the academic year began on August 23, 2021 (“Defendants’ Facemask Order”).³⁰

30. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

31. On August 17, 2021, the Office of Attorney General sent a letter to Galveston ISD Superintendent Gibson, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter requested an acknowledgment “that in light of the [Texas Supreme] Court’s rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not

²⁹ Tex. Gov’t Code § 418.018(c).

³⁰ Keri Heath, *Galveston ISD to require masks starting Aug. 23*, The Daily News (Aug. 13, 2021), available at https://www.galvnews.com/news/free/article_9df1963c-bb01-51a0-b230-77010154765e.html (last visited September 9, 2021). See also Galveston ISD’s Returning to Learning Plan at p. 1, a copy of which is attached hereto as Exhibit B.

enforce it pending the Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor’s order and protect the rule of law.”³¹

32. As of September 9, 2021, Galveston ISD and Superintendent Gibson have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office, and furthermore, they have indicated their intent to continue defying GA-38.³²

CLAIMS FOR RELIEF

33. Pursuant to Texas’s Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

34. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts’ general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts’ general authority and GA-38’s specific prohibition, GA-38’s specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants’ Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION

35. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.³³ “A

³¹ Exhibit C (Aug. 17, 2021 letter to Dr. Gibson).

³² See Ex. B.

³³ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”³⁴ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.³⁵ These requirements are readily met here.

I. The State will Likely Succeed on the Merits.

36. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants’ Facemask Order and (2) Governor Abbott lawfully suspended Defendants’ statutory authority to issue their Facemask Order.

A. GA-38 Expressly Preempts Defendants’ Facemask Order.

37. The point is simple. Governor Abbott’s emergency orders carry the force and effect of law.³⁶ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively “state laws.” Traditional preemption principles dictate that when a state law conflicts with a local law, the state law controls.³⁷

38. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.³⁸ Defendants’ Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by,

³⁴ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

³⁵ *Id.*

³⁶ Tex. Gov’t Code § 418.012.

³⁷ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

³⁸ Ex. A at pp. 3–4.

GA-38. As such, Defendants’ Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

39. A review of the Legislature’s intent, which is a focus of a preemption analysis,³⁹ supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

40. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴⁰ (2) that explicitly carry the force and effect of *state* laws.⁴¹ Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁴² Further, the Governor is the only one with the emergency powers to suspend laws;⁴³ use all available public resources, including resources of cities and counties;⁴⁴ and control the movement of persons and occupancy of premises on a statewide level.⁴⁵ The Legislature’s intent is clear. In the event of a conflict, Governor Abbott’s emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

41. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁴⁶ But here

³⁹ *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

⁴⁰ See Tex. Gov’t Code §§ 418.014–.015.

⁴¹ *Id.* § 418.012.

⁴² *Id.* § 418.011.

⁴³ *Id.* § 418.016(a).

⁴⁴ *Id.* § 418.017.

⁴⁵ *Id.* § 418.018.

⁴⁶ See, e.g., *id.* § 311.026.

harmonization *is* possible: school districts’ general authority is not abolished, but merely circumscribed, by GA-38’s prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁴⁷ so too does that general authority not exempt a school district from complying with GA-38. GA-38’s ban on mask mandates functions as a particular limit on school districts’ general authority.

42. The TDA reflects the Legislature’s comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁴⁸ In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

43. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.⁴⁹ And if the Governor’s orders under the TDA could not preempt school district rules, then county judges’ and city mayors’ orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local

⁴⁷ See *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

⁴⁸ *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) (“Nobody can question that the public schools of this state ‘are quasi public entities and are subject to direct statutory control’ by the Legislature.”).

⁴⁹ See Tex. Gov’t Code § 418.108.

emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State’s response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA, and it is not the law.

44. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

45. Governor Abbott, using his TDA-granted power,⁵⁰ suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵¹ Under the circumstances, Defendants had no authority to issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

46. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁵² That court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means

⁵⁰ TEX. GOV’T CODE § 418.016(a).

⁵¹ Ex. A at ¶ 5.

⁵² 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

of rules and regulations.”⁵³ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁵⁴

47. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁵⁵ The court reasoned that “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁵⁶ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁵⁷ The El Paso Court of Appeals’ reasoning applies equally here.

48. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

49. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

⁵³ *Id.* at 824 (citing various dictionaries).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁵⁷ *Id.*

II. The State will be Irreparably Injured Absent an Injunction.

50. The State's injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁵⁸

51. There, the Court explained that a century's worth of precedent establishes "the State's 'justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.'"⁵⁹ The Court noted that an *ultra vires* suit is a necessary tool to reassert the State's control over local officials who are misapplying or defying State laws.⁶⁰ The Court reasoned: "[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official's specific unauthorized actions."⁶¹

52. The Court continued that "[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial."⁶² The Court found that, "[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction."⁶³

53. Per *Hollins*, the irreparable injury requirement favors the State.

54. The El Paso Court of Appeals rightly viewed *Hollins* "as controlling" on the irreparable injury issue.⁶⁴

⁵⁸ 620 S.W.3d 400, 410 (Tex. 2020).

⁵⁹ *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *El Paso County*, 618 S.W.3d at 826.

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

55. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁶⁵ There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

56. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials’ attempt to usurp the Governor’s power to control the direction of the State’s response to the COVID-19 pandemic. The status quo favors the State.

57. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38’s ban on facemask mandates.⁶⁶ Each time, the Court overturned these injunctions because they altered the status quo.⁶⁷

58. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁶⁸ The Court explained that these facemask cases turn on a pure legal question: “[W]hich government officials have the legal authority to decide what the government’s position on [facemasks] will be.”⁶⁹ The Court continued: “The status quo, for many months, has been gubernatorial oversight

⁶⁵ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

⁶⁶ See Exhibits D–F.

⁶⁷ *Id.*

⁶⁸ Ex. F.

⁶⁹ *Id.* at ¶ 2.

of such decisions at both the state and local levels.”⁷⁰ The Court held that the status quo of “gubernatorial oversight” of disaster-related decisions “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.”⁷¹

59. Texas Supreme Court precedent requires that this Court enjoin Defendants’ Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

60. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

61. For the reasons discussed above, the State respectfully prays that this Court:

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants’ Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State’s application for a

⁷⁰ *Id.*

⁷¹ *Id.*

temporary injunction;

- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and
- H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief, General Litigation Division



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Christopher.Hilton@oag.texas.gov

ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

V.

GALVESTON INDEPENDENT SCHOOL DISTRICT, BOARD OF TRUSTEES OF GALVESTON INDEPENDENT SCHOOL DISTRICT, DR. JERRY GIBSON in his official capacity as superintendent of the Galveston Independent School District, and ANTHONY BROWN, DAVID H. O'NEAL, JR., JOHNNY SMECCA, MINDY LAKIN, SHAE JOBE, and ANN MASEL, in their official capacities as trustees of the Galveston Independent School District,

Defendants.

IN THE DISTRICT COURT

GALVESTON COUNTY, TEXAS

____ JUDICIAL DISTRICT

**DECLARATION OF KIMBERLY GDULA IN SUPPORT OF THE STATE OF TEXAS'S
VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Kimberly Gdula, my date of birth is October 27, 1982, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency orders in question and other publicly available materials which this Court will be

able to take judicial notice of.

Executed in Travis County, State of Texas, on the 9th day of September 2021.

A handwritten signature in cursive script, appearing to read 'K. Gdula', positioned above a horizontal line.

Kimberly Gdula



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

3:15 PM O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

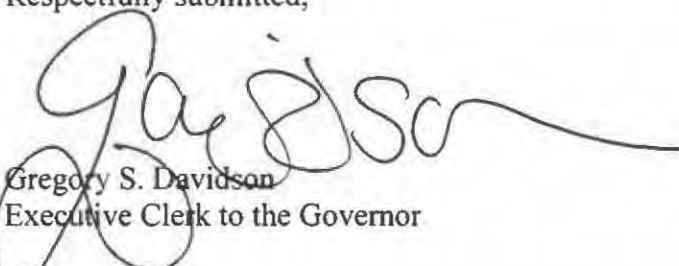
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

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and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
 - a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".
JOE A. ESPARZA
Deputy Secretary of State

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INTRODUCTION

The Galveston Independent School District places the safety and well-being of staff and students as a high priority. The 2021-2022 school year Returning to Learning plan outlines the operational and instructional protocols for the district. This plan is a living document which will be reviewed every six months until September 30, 2023. Stakeholder input and public comment will be gathered as part of the process for making adjustments to the plan.

2021 - 2022 RETURNING TO LEARNING TIMELINE - First Day for Students August 23, 2021

Monday, August 3 - Friday, August 6

New Teacher Academy

Monday, August 9

Veteran Teachers Return

Monday, August 23

First day of school on site for students

Friday, December 17

First semester ends

Tuesday, January 4, 2022

Second semester begins

January 4 - 21, 2022

Six Month Plan Review

May 26, 2022

End of the 2021-2022 School Year

July 11 - 22, 2022

Six Month Plan Review

ON-SITE LEARNING PROTOCOLS

In Galveston ISD, all students and staff will be required to wear masks at all district facilities and on buses when school begins on August 23. This is a health and safety decision made for the purpose of keeping our children and our staff safe during the school day and at all district-sponsored events. We will continue conversations with local health officials throughout the year to determine any future course of action or adjustments to our health and safety practices.

CDC Recommendations

- Students and staff are encouraged to wash hands often. Use hand sanitizer with at least 60% alcohol if soap and water are unavailable.
- Cover coughs and sneezes with a tissue, then throw the tissue away.
- Avoid touching your eyes, nose and mouth with unwashed hands.
- Disinfect surfaces, buttons, handles, knobs and other places touched often.
- Avoid close contact with people who are sick.
- Fully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations.

Transportation

- Bus routes will be established to address efficiency and safety.
- Social distancing constitutes no more than three students per seat for elementary school and two students per seat for middle and high school. Siblings are encouraged to share a seat.
- When possible, the bus windows will be open to allow outside air to circulate in the bus.
- Buses will be thoroughly cleaned after each route, focusing on high-touch surfaces such as bus seats, steering wheels, knobs, and door handles.

Entry/Exit

- Schools have the authority and responsibility to limit access to the facilities and restrict visits in school to only those essential to school operations.
- Staggered arrivals and dismissals are encouraged and will be determined by campus principal and leadership.
- Schools will establish staggered, no-contact pick-up and drop-off times. Parents should remain in vehicles requiring students to get in and out of cars independently and preventing parents from walking students into the building.
- Drop off and pick-ups should be contactless whenever possible.
- Campus hours of operation will be strictly adhered to; leaving a child at an unattended location is prohibited.
- Families will be encouraged to assign one person who is not high risk to consistently pick-up and drop-off their student each day.
- Loitering at exit doors will not be allowed.
- Elementary campuses will communicate the week one process for escorting pre-K and kindergarten students.
- All campuses will communicate processes for drop-off and pick-up of students for any reasons (medication, doctor's appointments, illness, campus violations).
- Children will report to a specific location for entry and exit; each campus will communicate the entry/exit location for students. Staff will be provided the entry/exit by their principal.
- Visitors will be communicated with through contactless intercom. If necessary, visitors will enter the main doors and report to the reception desk for security check-in.
- During an emergency, the closest exit should be used.
- Schools will consider circumstances for students, staff, visitors with physical, behavioral or health challenges and work to accommodate any limitations. Decisions will be developmentally appropriate.
- Tailored solutions may be needed for each campus, classroom or school setting. Communication to address entry/exit protocols and solutions should be expected.

- The campus reserves the right to limit guests in the front office to maintain social distancing.

Health Survey – Temperature Checks

- The Health and Safety of our students and employees is of the utmost importance. Proper daily screening will be supported with effective identification and tracking processes as determined by the district.
- Staff must report to their immediate supervisor if they themselves have COVID-19 symptoms or are lab confirmed with COVID-19, and, if so, must remain off campus until they meet the criteria for reentry (see below for re-entry information).
- Any student feeling feverish should be given an immediate temperature check to determine if they are symptomatic.
- Any person presenting a temperature above 100.0 or who shows COVID-19 symptoms while at school will be sent home. Every attempt will be made to isolate the student prior to pickup.
- Parents must ensure they do not send a child to school on campus if the child has COVID-19 symptoms or is lab-confirmed with COVID-19, and instead will receive classwork until the conditions for re-entry are met.
- During normal school hours all visitors will be screened.
- Visitation will be limited to essential visitors who have previously scheduled appointments.
- Nonessential visitors should utilize virtual meetings, when possible. Lunch visits are prohibited.
- Nonessential deliveries are prohibited.

WHILE STUDENTS ARE IN THE BUILDING

Common Area Physical Distancing

Cafeterias, restrooms, water fountains, hallways, gyms, or student commons area.

- It is recommended that water fountains in schools be used to refill personal use bottles only.
- Meals will be consumed at a safe distance in the cafeteria unless otherwise determined by the district.
- Restrooms should be monitored to ensure students stay spaced and are not lingering. Enforce proper hand washing.
- Hand sanitizer stations will be located at the entrance to each campus and throughout the campus.
- When students leave a classroom, they should be instructed to wash hands or perform hand hygiene with hand sanitizer before going to the next location and to limit the touching of anything nonessential.
- Locker use is discouraged. If proper social distancing can be managed, lockers will be used by one person only.

Social Distancing

Explicit expectations, monitored and managed for 100% compliance

- Arrange classroom spaces to ensure social distancing that accommodate a reasonable number of students in a classroom. Consideration given to age of students and capacity to self monitor.
- Students and staff will be encouraged to use no-touch greetings.
- Student workstations facing the same direction when possible.
- Movement in the classroom and hallway should minimize gatherings.
- Physical education classes will practice physical distancing, whenever possible.
- As possible, students should be managed as a pod - small groups of the same students.

- Community supplies should be avoided. Each child should have their own supplies.
- Classroom materials that cannot be disinfected (magazines, books, etc.) should be limited for use by one person only.
- We will continue to offer extracurricular activities and afterschool services consistent with the guidance in this document and with the UIL.
- Employees of school systems, like employees of any organization, must continue to meet the work expectations set by their employers, subject to any applicable employment contract terms.

Student Mixing

- Assemblies and other activities that bring large groupings of students and/or teachers and staff together should be reviewed as to whether they are essential.
- GISD will continue to follow all outlined district campus safety protocols during emergency actions and emergency drills, including drills or emergencies related to fire, lockdown, shelter in place, and emergency evacuation.

In the event of an actual emergency, such as a fire, lockdown, evacuation, or a shelter in place, administration will emphasize that social distancing will not be required but should be followed when possible.

HEALTH & SAFETY

COVID-19 Symptoms

Screening is accomplished by asking questions by phone or other electronic method or in-person. *Have you/they recently begun experiencing any of the following in a way that is not normal for you/them?*

- | | |
|----------------------------------|----------------------------|
| • fever (measured or subjective) | • fatigue |
| • chills | • congestion or runny nose |
| • rigors | • cough |
| • myalgia | • sore throat |
| • headache | • shortness of breath |
| • nausea or vomiting | • difficulty breathing |
| • diarrhea | • new olfactory disorder |
| | • new taste disorder |

Close Contact

This document refers to “close contact” with an individual who is lab-confirmed positive to have COVID-19. Close contact is determined by an appropriate public health agency. For clarity, close contact is defined as:

- A. Being directly exposed to infectious secretions (e.g., being coughed on while not wearing a mask or face shield); or
- B. Being within 6 feet of an infected person for a **cumulative total of 15 minutes or more over a 24-hour period** starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection) until the time the patient is isolated.

Individuals are presumed infectious at least two days prior to symptom onset or, in the case of asymptomatic individuals who are lab-confirmed with COVID-19, two days prior to the confirming lab test.

People who have been in close contact with someone who has COVID-19—excluding people who have had COVID-19 within the past 3 months or who are fully vaccinated.

- People who have tested positive for COVID-19 within the past 3 months and recovered do not have to quarantine or get tested again as long as they do not develop new symptoms.
- People who develop symptoms again within 3 months of their first bout of COVID-19 may need to be tested again if there is no other cause identified for their symptoms.
- People who have been in close contact with someone who has COVID-19 are not required to quarantine if they have been fully vaccinated against the disease and show no symptoms.

Nurse's Office

- The nurse staff will set up a separate or partitioned area for symptomatic students while they wait for parent pick-up.
- The nurse staff will conduct a second temperature check to confirm symptoms if the first check indicates a high temperature or the student reports feeling feverish.
- The nurse staff will contact parents if symptoms are indicated and will communicate return to school protocols to the parent/guardian.
- The nurse staff will initiate GUSD communication protocol for any symptomatic student including communication to campus administration.

Disinfection/Sanitation

- Staff will be properly trained on cleaning standards and expectations. Facilities, Maintenance, and Operations employees will follow the CDC guidelines regarding the cleaning, sanitation, and disinfection of all district facilities.
- Students will be provided explicit instruction and practice on proper hand washing. Students are encouraged to engage in supervised handwashing for at least 20 seconds at least two times each day, in addition to being encouraged to wash hands after using the restroom and before eating.
- Tissues should be used to cover coughs and sneezes. If not available, coughs and sneezes should be covered in their elbows. After tissues are discarded, hands are to be washed immediately with soap and water or hand sanitizer.
- There will be daily cleaning of touch point surfaces and work areas (doorknobs, handles, rails, light switches, water fountains, desks, chairs, tables, etc.)
- All schools and offices will be provided with enough hand soap, paper towels, tissues, hand sanitizer, and disinfectant to accommodate frequent cleaning of high touch areas, and stock will be replenished regularly or upon request.
- Restrooms will be cleaned at least two times per day.

POST LAB-CONFIRMED CASES

Consideration for Intermittent Closure

Required actions if individuals with lab-confirmed cases have been in a school.

- If an individual who has been in a school is lab-confirmed to have COVID-19, the district must notify the Galveston County Health Department, in accordance with applicable federal, state and local laws and regulations, including confidentiality requirements of the Americans with Disabilities Act (ADA) and Family Education Rights and Privacy Act (FERPA).

- The school will close off the areas that were heavily used by the individual with the lab-confirmed case until the non-porous surfaces in those areas can be disinfected, unless more than 3 days have already passed since that person was on campus.
- Consistent with school notification requirements for other communicable diseases, and consistent with legal confidentiality requirements. Schools must notify all teachers, staff and families of all students in a school if a lab-confirmed COVID-19 case is identified among students, teachers or staff who participate in any on-campus activities.
- If three or more confirmed COVID-19 cases are in one specific area (classroom, pod) students and staff of that area will be advised to self-quarantine and students will move to remote learning while the affected area is closed for deep cleaning.
- If COVID-19 cases exceed 10% of a facility occupancy the entire facility will be closed for a minimum of two days. Students and staff move to remote learning and work. All students and staff at this campus may return if symptom free after cleaning.
- If COVID-19 cases exceed 10% at four or more GUSD facilities, all facilities will close for a minimum of 5 days while students and staff move to remote learning and work. All facilities and buses will be disinfected, and extracurricular activities will be cancelled.

Re-Entry/Returning to School

Any individual who is either a) lab-confirmed to have COVID-19; or b) experience the symptoms of COVID-19 must stay at home throughout the infection period, and cannot return to campus until the school system screens the individual to determine if any of the below conditions for campus reentry have been met.

***Any non-symptomatic person residing in the same household as an individual who is in category a) or b) cannot return to school until the symptomatic individual meets the criteria below:

1. If diagnosed with COVID-19 the individual may return to school when all three of the following are met:
2. At least 24 hours have passed since recovery (resolution of fever without the use of fever-reducing medications)
3. Improvement in symptoms (cough, shortness of breath); and
4. At least ten days have passed since symptoms first appeared. If symptoms that could be COVID-19 are not evaluated by a medical professional or tested for COVID-19, such individual is assumed to have COVID-19, and the individual may not return to the campus until the individual has completed the same three steps of criteria listed above.

If the individual has symptoms that could be COVID-19 related and wants to return to school before completing the above stay at home period, the individual must either a) obtain a medical professional's note clearing the individual for return based on an alternative diagnosis; or b) determined to be free of COVID-19 at an approved COVID-19 testing location.

COVID-19 ACTION LEVELS

Revised 9/3/21

Level 1	<p>Low Transmission</p> <p>Limited or no confirmed cases of COVID-19 among staff or students</p> <ul style="list-style-type: none"> Families and staff will be notified daily of positive cases in the district. Persons who came within close contact of an individual with a confirmed case of COVID-19 will be contacted and advised to quarantine for 10 days. Masks are required for students and staff. Extracurricular activities permitted with restrictions. Restrict outside visitors and guests.
Level 2	<p>Moderate Transmission</p> <p>One or more confirmed case(s) of COVID-19 at one facility</p> <ul style="list-style-type: none"> Families and staff will be notified daily of positive cases in the district. Persons who came within close contact of an individual with a confirmed case of COVID-19 will be contacted and advised to quarantine for 10 days. Masks are required for students and staff. Postpone non-critical gatherings and events and restrict outside visitors to essential services only.
Level 3	<p>High Transmission</p> <p>A cluster of confirmed COVID-19 cases in one specific area; i.e. classroom</p> <ul style="list-style-type: none"> Families and staff will be notified daily of positive cases in the district. Persons who came within close contact of an individual with a confirmed case of COVID-19 will be contacted and advised to quarantine for 10 days. Students and staff in that area will be advised to self-quarantine for a minimum of two days. Communications will be sent out about self-health monitoring, prevention information, and reminder to stay home if ill to all persons at the school or facility and parents.
Level 4	<p>Facility Closure</p> <p>Evidence of widespread COVID-19 cases at <u>one</u> facility</p> <ul style="list-style-type: none"> Entire facility will be closed for a minimum of two days. Families and staff will be notified daily of positive cases in the district. Persons who came within close contact of an individual with a confirmed case of COVID-19 will be contacted and advised to quarantine for 10 days. All students and staff at this campus may return if symptom free upon determination by the school district and health authorities.
Level 5	<p>District Closure</p> <p>Evidence of widespread COVID-19 cases within <u>multiple</u> facilities</p> <ul style="list-style-type: none"> All GISD facilities close for a minimum of two days. Families and staff will be notified daily of positive cases in the district. All auxiliary areas, such as playgrounds and athletic fields, may be closed, pending TEA and UIL guidelines. Extracurricular activities are canceled, pending TEA and UIL guidelines.

Decisions are made with the best information at the time and are subject to change with limited notice.

Continuity of Services

Galveston Independent School District is committed to ensuring that all students have successful learning experiences which prepare them for life. The District intends to mitigate learning loss through the implementation of the REACH Program at the elementary level and reading and math classes at the middle school level. High school students will have opportunities to the existing credit recovery classes. Based on feedback from school and community stakeholders, Galveston ISD was able to identify five top priorities for the use of the ESSER III funding:

- Student learning loss
- Technology
- Additional Staff Support
- Mental Health Intervention
- Retention of Staff

The plan is a living document and will be reviewed with feedback from school and community stakeholders every six months.

Student Learning Loss

Elementary Plan for Closing the Learning Gaps

During the 2020 – 2021 school year, approximately 500+ elementary students fell behind in their academic work due to COVID-19. Many of these students struggled with remote learning. Some experienced multiple quarantines while others did not participate in learning on a consistent basis. In an effort to mitigate the learning loss, the elementary campuses will implement a rigorous campus intervention program beginning August 23, 2021 through June 1, 2023.

Overview of Program:

Burnet, Morgan, Oppe, Parker, and Rosenberg will each have an intervention program for grades K, 1, and 2 comprised of no more than 15 students in each intervention class. These campuses will have master teachers (Intervention Specialists) to work with these students. One additional teacher will be hired to serve grades 3 and 4 combined. For two years, the remaining classrooms will have a limit of 20 students per class. Limiting the numbers of students per classroom will afford teachers more opportunities to meet students' individual needs and to better plan instructional groups. These campuses will have an instructional coach (one per grade level in kinder, 1st, and 2nd and one for 3rd and 4th combined) to work with data and their respective grade level students. These instructional coaches will be in addition to title tutors/reading coaches some campuses have. Crenshaw will hire one master teacher to work with identified students.

The Plan:

Each campus will identify 15 kindergarten students, 15 first grade students, 15 second grade, 15 third grade students, and 15 fourth grade students who are to participate in REACH.

Campuses will hire four teachers (one for K, one for 1, one for 2, and one for 3rd and 4th grade combined) who will coordinate efforts with other classroom teachers at their grade level and would serve as the coach to address the needs of the grade level students. Crenshaw will be able to hire one teacher.

Every teacher serving in the Campus Intervention Program will be trained on LLI for grades K, 1 and 2. Students will participate in STEMscopes math and ST Math.

The Campus Intervention Program will serve students who are in danger of being retained. Special Education students will not participate in this program, but will be served through the Special Education program.

Middle School Plan for Closing the Learning Gaps

During the 2020 – 2021 school year, approximately **600** middle school failed two or more courses due to COVID-19. Like their elementary counterparts, many of these students struggled with remote learning. Some students experienced multiple quarantines while others did not participate in learning on a consistent basis. In an effort to mitigate the learning loss, the middle school principals in collaboration with the high school principals propose the following interventions beginning August 23, 2021 through June 1, 2024.

Overview of Program:

Each of the campuses acknowledged the importance of strengthening support to their teachers and to the students effective the 2021 – 2022 school year. Each campus would benefit from having a content specialist in each of the core subjects (math, science, social studies, ELA). Currently, Central Middle School is the only school using this model. Austin, Collegiate and Crenshaw would benefit tremendously with the additional support. In addition to the content specialists, students at each of the campuses would also benefit from two additional math teachers and two additional language arts teachers to facilitate the acceleration of students who need additional support.

The Plan:

Each campus will identify eighth grade students who show evidence of progress to be able to move on to Ball High School per the request of the Ball Principal. Ball will ensure that the students are placed in classes that will help them catch up and be on course for ninth grade work.

Students in grades five **(5)** through seven **(7)** will be identified as:

1. those who need to be **retained** and repeat the entire year;
2. those who will participate in on grade level classes but will also have an additional **targeted class** in math and/a targeted class in ELA;
3. those students who are currently on grade level.

Students who are retained will repeat the entire year. This plan is focused on those students who are capable of meeting grade level expectations with additional assistance.

Each campus needs a minimum of four **(4)** teachers for targeted instruction; **one** for 5th and 6th grade math; **one** for 7th and 8th grade math; **one** for 5th and 6th grade ELA; **and** one for 7th and 8th grade ELA. These teachers will provide direct instruction to the identified students.

Instructional configuration – Students in grades 5 and 6 will participate in a blocked reading class and a blocked math class. The Targeted Class for either reading or mathematics will be an additional 45 – 50 minutes scheduled into the day.

Students in grades 5, 6, 7, 8 who have not been successful on STAAR in previous years will be strategically scheduled into additional math and/or reading instruction (Targeted Math) or (Targeted ELA) class. The

purpose is to ensure that students get the needed support as part of their regular school day and not pull students out of their on-grade level classes or have students wait for an after school intervention. **Intervention (Targeted) classes will have no more than 15 students in each class.**

Students who are significantly overaged would be candidates for attending AIM. AIM will be expanded according to AEA (Alternative Education Accountability) guidelines to support additional students in grades 6 - 8.

High School Plan for Closing the Learning Gaps

Students will participate in STAAR prep classes as well as credit recovery classes. The high school will also strengthen its Newcomer Program in order to support English Learners.

All schools will provide an Accelerated Instruction program beginning the summer of 2022 and continuing through 2025.

Technology

Technology includes hardware, software, and internet connectivity. Based on the school and community feedback teachers and students need access to Chromebooks, laptops, swivels, and graphing calculators. Teachers and students also need access to software programs in mathematics and reading that support student learning.

Galveston ISD remains committed to assisting all students in need of technology and will continue to work diligently to ensure all students have access.

The district will continue to provide students with technology, such as laptops, Chromebooks and internet hotspots. Students will be required to use the district-issued devices.

Families that need a laptop or a hot spot will be contacted by their school leadership and technology team. Together they will determine needs to access GISD curriculum and instructional options.

- Web: gisd.org
- GISD Service Desk provides technology support to GISD employees and families.
- Skyward access assistance provided by campus support personnel

Additional Staff Support

In order to provide students with intensive instruction and support to assist in the COVID-19 recovery, school and community stakeholders recommended additional staff for all elementary campuses and middle school campuses. The staff will be used to mitigate learning loss, to provide wraparound services and to support the social emotional needs of students. Staff includes additional teachers, instructional coaches to support teachers and students, Social Emotional Learning specialists, an additional part-time counselor and additional case managers for homeless students. Communities in Schools is a recognized agency that may be supported through the use of ESSER III.

Recognizing the need for professional learning, the school and community stakeholders recommended that dollars be allocated for professional development for PreK, for bilingual teachers, instructional interventionists and instructional coaches.

Mental Health Intervention

SEL Team Support

The Social-Emotional Learning department will have specialists available to work with campus teams focusing on maintaining social and emotional health. Session topics include mindfulness, stress management, and the warning signs of depression and anxiety. Additionally, a mental health hotline will continue to be accessible to GISD students and families.

Professional development will be offered to school staff to ensure teachers and school leaders are better equipped to support students in crisis. Campus-based counselors, social workers, and SEL specialists will continue to perform outreach to students and families.

Retention of Staff

Performance Pay for Turn-Around Campuses

Teachers and administrators at four high needs campuses (Burnet, Central, Collegiate, Rosenberg) will also have the opportunity to participate in an incentive program for accelerating student achievement and growth.

Retention Incentive

Effective 2022-2023, teachers will be eligible for a retention incentive.

Grading Policy

- Grades will be taken during each grading cycle of the 2021-2022 school year.
- All cycle grades will be used in the calculation of the final average for any class.
- Teachers will record grades, in a timely manner, which will be available for parents and students to access through the GISD Skyward Family Access portal.
- Teachers will use existing district support systems to track student data, measure academic progress, and determine the need for additional instructional supports and interventions.
- Dual Credit and Dual Enrollment courses will be subject to the grading policies of the Institution of Higher Education issuing the college credit.

Special Populations Support and Services

- Students receiving special services will continue to receive technology, support, accommodations, and modifications required by the student's IEP and Section 504.
- ARD Committees will continue to meet to determine the unique needs of students who receive special education services.
- Parents will continue to attend ARD meetings virtually if needed and will receive digital copies of their student's IEP.
- Parents of students served by specialized special education programs will receive individualized support from a special education case manager to ensure their student's needs are met.
- Parents of Gifted and Talented students will continue to attend virtual GT Meetings and communicate with campus GT coordinators for GT services.

Extracurricular

Extracurricular activities will follow the same safety protocols employed on campuses during the school day. UIL may impose more robust regulations.

Student assemblies, outdoor activities, and field trips will be postponed or held virtually until it is deemed safe for them to resume in person. Instructional interaction with colleges and industry sites will be conducted virtually. In the meantime, museums and cultural centers will be recruited to deliver programming directly to students.

Athletics

GISD Athletics will tentatively schedule games for the fall, while awaiting detailed state guidance about high school sports from the University Scholastic League. Plans will be adjusted as COVID-19 conditions change.

Coaches and student athletes will undergo entry screening in alignment with district screening protocols at all practices, sub-varsity games, and games played in district facilities.

Fan attendance may be limited or prohibited at campus and district sporting events depending on conditions.

If fans are allowed, they will be encouraged to purchase tickets online and screened upon arrival in accordance with district screening protocols. Fans also must self-monitor for COVID-19 symptoms, check their temperatures before coming to campus, and stay home when sick.

Our Commitment to Communicate

Galveston ISD is committed to educating parents, students, staff, and stakeholders about the GISD 2021-2022 Returning to Learning Plan in advance of the start of the upcoming school year. The plan will be translated into Spanish and distributed using a variety of communications channels.

- Emails and phone messages
- Websites
- Community and staff meetings
- Social media
- News media
- Parent flyers

The GISD Returning to Learning Plan and all associated information will be available on the district's dedicated web page: <https://www.gisd.org/returningtolearning>

The Galveston ISD Returning to Learning Plan is a work in progress as we continue to receive data and guidance from education and health professionals and local authorities. We may make changes to the plan as necessary to **Provide An Exceptional Educational Experience in the Safest Possible Way.**



EXHIBIT C

August 17, 2021

VIA EMAIL

Dr. Jerry Gibson
Superintendent, Galveston ISD
3904 Avenue T
Galveston, TX 77550
jerrygibson@gisd.org

Dear Dr. Gibson:

You recently enacted a local policy mandating that students and faculty wear face masks at schools in your district. Your actions exceeded your authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ My office has taken legal action in multiple cases across the state to defend the rule of law by ensuring the Governor's valid and enforceable orders are followed.

You are advised that two days ago the Texas Supreme Court issued two orders staying temporary restraining orders issued by trial courts in Dallas and Bexar counties that sought to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ These orders are a preview of what is to come. We are confident that any attempt to obtain a similar

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.–El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>

temporary restraining order in your jurisdiction will inevitably be stayed by the Texas Supreme Court and that any subsequent relief ordered by a trial court will ultimately be reversed.⁵

The Supreme Court has spoken. Local orders purporting to enjoin the Governor's authority may not be enforced while the Court considers the underlying merits of these cases. My office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I request your acknowledgement by 5 p.m. Tuesday, August 17, that in light of the Court's rulings, you will rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Supreme Court's disposition of the cases before it involving this issue. Otherwise, you will face legal action taken by my office to enforce the Governor's order and protect the rule of law.

For Texas,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly stylized font.

KEN PAXTON
Attorney General of Texas

⁵ *Veigel v. Tex. Boll Weevil Eradication Foundation*, 549 S.W.3d 193, 202–03 (Tex. App.—Austin 2018, no pet.) (acknowledging that lower courts “are not free to mold Texas law as we see fit but must instead follow the precedents of the Texas Supreme Court”).

EXHIBIT D

IN THE SUPREME COURT OF TEXAS

No. 21-0687

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

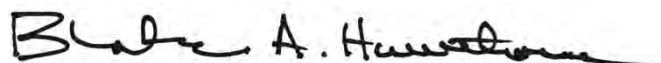
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT E

IN THE SUPREME COURT OF TEXAS

No. 21-0686

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

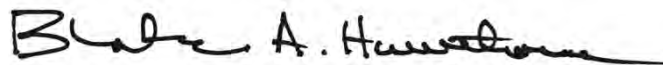
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

EXHIBIT F

IN THE SUPREME COURT OF TEXAS

No. 21-0720

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

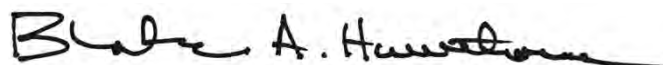
1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.

EXHIBIT D

Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

V.

GALVESTON INDEPENDENT SCHOOL DISTRICT, BOARD OF TRUSTEES OF GALVESTON INDEPENDENT SCHOOL DISTRICT, DR. JERRY GIBSON in his official capacity as superintendent of the Galveston Independent School District, and ANTHONY BROWN, DAVID H. O'NEAL, JR., JOHNNY SMECCA, MINDY LAKIN, SHAE JOBE, and ANN MASEL, in their official capacities as trustees of the Galveston Independent School District,

Defendants.

IN THE DISTRICT COURT

GALVESTON COUNTY, TEXAS

JUDICIAL DISTRICT

ORDER GRANTING STATE OF TEXAS'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Before the Court is the State of Texas's Application for a Temporary Restraining Order. After due consideration of the motion, briefing, the evidence, and the law, the Court finds that this application should be granted.

The Court finds that Defendants do not have authority to issue or enforce a facemask mandate in light of Governor Abbott's executive order GA-38.

The Court finds that the State of Texas is thus likely to prevail on the merits and that a temporary restraining order is required to preserve the status quo and to

prevent the irreparable harm of the continued violation of state law absent injunctive relief.

It is therefore ORDERED that the State of Texas's Application for a Temporary Restraining Order is GRANTED.

It is FURTHER ORDERED that Defendants are prohibited from enforcing a facemask mandate for as long as GA-38 (or a future executive order containing the same prohibitions) remain in effect.

It is FURTHER ORDERED that the State of Texas is exempt from the requirement to post bond.

It is FURTHER ORDERED a hearing on the State of Texas's application for temporary injunction is set for the _____ day of _____ 2021 at _____. The purpose of this hearing shall be to determine whether the Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits.

Signed this _____ day of _____, 2021 at _____.

JUDGE PRESIDING

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Thomas Ray on behalf of Kimberly Gdula
Bar No. 24052209
thomas.ray@oag.texas.gov
Envelope ID: 57114237
Status as of 9/10/2021 9:02 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kimberly Gdula		Kimberly.Gdula@oag.texas.gov	9/9/2021 7:01:03 PM	SENT
Tamera Martinez		tamera.martinez@oag.texas.gov	9/9/2021 7:01:03 PM	SENT

CAUSE NO. CV-01330-21-09

STATE OF TEXAS,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
LUFKIN INDEPENDENT	§	
SCHOOL DISTRICT, BOARD OF	§	
TRUSTEES OF LUFKIN	§	
INDEPENDENT SCHOOL	§	
DISTRICT, LYNN TORRES, in	§	
her official capacity as	§	ANGELINA COUNTY, TEXAS
superintendent of the Lufkin	§	
Independent School District, and	§	
HALL HENDERSON, KRISTI	§	
GAY, ALLYSON LANGSTON,	§	
JOE CEASAR, MATT KNIGHT,	§	
ANDRA SELF, and SCOTT	§	
SKELTON, in their official	§	
capacities as trustees of the	§	
Lufkin Independent School	§	
District,	§	
	§	_____ JUDICIAL DISTRICT
DIBOLL INDEPENDENT	§	
SCHOOL DISTRICT, BOARD OF	§	
TRUSTEES OF DIBOLL	§	
INDEPENDENT SCHOOL	§	
DISTRICT, VICKI THOMAS, in	§	
her official capacity as	§	
superintendent of the Diboll	§	
Independent School District, and	§	
ANA CASTILLO, LAMONA	§	
COLEMAN, LAURA BETH	§	
COOPER, ROGELIO "ROY"	§	
SALAZAR, MIKE TERRELL,	§	
NATHAN TERRELL, and JAY	§	
WYATT, in their official capacities	§	
as trustees of the Diboll	§	

Independent School District §
 §
 §
Defendants.

**STATE OF TEXAS’S VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

INTRODUCTION

1. Defendants are deliberately violating state law. In flouting GA-38’s ban on mask mandates, Defendants challenge the policy choices made by the State’s commander in chief during times of disaster.¹ But the Texas Legislature made the Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Lufkin ISD and Diboll ISD’s mask mandates should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

¹ See Tex. Gov’t Code § 418.015(c).

² *Id.* § 418.011.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

Lufkin ISD Defendants

6. Defendant Lufkin Independent School District (“Lufkin ISD”) has approximately 8,300 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Lufkin ISD is the board of trustees for Lufkin ISD.

8. Defendant Lynn Torres is the superintendent of Lufkin ISD.

9. Defendants Hall Henderson, Kristi Gay, Allyson Langston, Joe Ceasar, Matt Knight, Andra Self, and Scott Skelton are members of the Lufkin ISD Board of Trustees.

10. Defendants may be served with process through Hall Henderson, the president of the Lufkin ISD Board of Trustees, or through Lynn Torres, the Lufkin ISD superintendent.

Diboll ISD Defendants

11. Defendant Diboll Independent School District (“Diboll ISD”) has approximately 1,803 students enrolled from Pre-Kindergarten to Grade 12.

12. Defendant Board of Trustees of Diboll ISD is the board of trustees for Diboll ISD.

13. Defendant Vicki Thomas is the superintendent of Diboll ISD.

14. Defendants Ana Castillo, Lamona Coleman, Laura Beth Cooper, Rogelio “Roy” Salazar, Mike Terrell, Nathan Terrell, and Jay Wyatt are members of the Diboll ISD Board of Trustees.

15. Defendants may be served with process through Jay Wyatt, the president of the Diboll ISD Board of Trustees, or through Vicki Thomas, the Diboll ISD superintendent.

JURISDICTION AND VENUE

16. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

17. Venue is proper in Angelina County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State’s Emergency Response.

18. Two core purposes of the Texas Disaster Act of 1975 (“TDA”) are to: (1) mitigate the “damage, injury, and loss of life and property” resulting from a disaster; and (2) “provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”³

³ Tex. Gov’t Code § 418.002(1), (3).

19. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

20. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

21. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

22. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

¹⁴ *Id.* § 418.108(g).

a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

23. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

24. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

25. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

26. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

27. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure.”²⁰

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ Ex. A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at 1.

²⁰ *Id.* at 2–3.

28. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

29. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

30. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

31. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

32. GA-38’s prohibition on local officials’ facemask mandates falls comfortably within Governor Abbott’s broad power to “control ingress and egress to

²¹ *Id.* at 3

²² *Id.* at 3–4.

²³ *Id.* at 4.

²⁴ *Id.* at 3–4.

²⁵ *Id.* at 3–5.

²⁶ *Id.* at 4.

²⁷ *Id.* at 1.

²⁸ *Id.* at 3.

and from a disaster area and the movement of persons and occupancy of premises in the area.”²⁹

33. Specifically, GA-38’s ban on facemask mandates controls “ingress and egress” to, “movement” in, and “occupancy of” a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when “occupying” premises in a disaster area.

III. Lufkin ISD Issues a Facemask Mandate in Defiance of GA-38.

34. On or about September 1, 2021, Lufkin ISD’s Superintendent Lynn Torres announced a mask mandate for all students and staff (“Lufkin ISD Mask Mandate”).³⁰

35. Defendant Torres provides that, “While I might wish that the state government would have provided schools with more guidance and support, ultimately these matters are better handled at the local level rather than through a one-size fits-all approach from the State.”³¹

36. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

²⁹ Tex. Gov’t Code § 418.018(c).

³⁰ Exhibit E, Lufkin ISD Reinstating Mask Mandates for Staff and Students, available at <https://www.lufkinisd.org/2021/09/01/lufkin-isd-reinstating-mask-mandate-for-staff-and-students/>.

³¹ *Id.*

37. On September 3, 2021, the Office of Attorney General sent a letter to Lufkin ISD Superintendent Torres, warning that the imposition of the mask mandate exceeded her authority and violated GA-38. The letter requested that Superintendent Torres, “rescind [the] local policy requiring masks in public schools or alternatively, not enforce it pending the Texas Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.”³²

38. As of September 13, 2021, Lufkin ISD and Superintendent Torres have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office, and furthermore, they have indicated their intent to continue defying GA-38.

IV. Diboll ISD Issues a Facemask Mandate in Defiance of GA-38.

39. On or about August 30, 2021, Diboll ISD’s Board of Trustees passed a resolution requiring all students, staff, and visitors to wear a mask, which took effect on September 1, 2021 (“Diboll ISD Mask Mandate”).³³

40. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

³² Exhibit F, (Sept. 3, 2021, Office of the Attorney General letter to Superintendent Torres).

³³ Exhibit G, Texas AG Office Threatens Legal Action Against Diboll ISD for Mask Mandate, available at <https://www.kltv.com/2021/09/10/texas-ags-office-threatens-legal-action-against-diboll-isd-mask-mandate/#:~:text=%E2%80%9CYour%20district%20recently%20enacted%20a,Office%20wrote%20in%20the%20letter.&text=The%20Diboll%20ISD%20School%20Board,vote%20of%205%20to%201>.

41. On September 7, 2021, the Office of Attorney General sent a letter to Diboll ISD Superintendent Thomas, warning that the imposition of the mask mandate exceeded her authority and violated GA-38. The letter requested that Superintendent Thomas, “rescind [the] local policy requiring masks in public schools or alternatively, not enforce it pending the Texas Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.”³⁴

42. As of September 13, 2021, Diboll ISD and Superintendent Thomas have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office, and furthermore, they have indicated their intent to continue defying GA-38.

CLAIMS FOR RELIEF

43. Pursuant to Texas’s Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

44. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts’ general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts’ general authority and GA-38’s specific prohibition, GA-38’s specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants’ Facemask Order is invalid, unlawful, and constitutes an *ultra vires* act.

³⁴ Exhibit H (Sept. 7, 2021, Office of the Attorney General letter to Superintendent Thomas).

**APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER
AND A TEMPORARY INJUNCTION**

45. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.³⁵ “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”³⁶ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.³⁷ These requirements are readily met here.

I. The State will Likely Succeed on the Merits.

46. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants’ Facemask Order and (2) Governor Abbott lawfully suspended Defendants’ statutory authority to issue their Facemask Order.

A. GA-38 Expressly Preempts Defendants’ Facemask Order.

47. The point is simple. Governor Abbott’s emergency orders carry the force and effect of law.³⁸ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively “state laws.” Traditional preemption principles dictate that when a state law conflicts with a local law, the state law controls.³⁹

³⁵ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

³⁶ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

³⁷ *Id.*

³⁸ Tex. Gov’t Code § 418.012.

³⁹ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

48. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.⁴⁰ Defendants’ Facemask Order imposes facemask requirements that are at odds with, and expressly prohibited by, GA-38. As such, Defendants’ Facemask Order is expressly preempted by GA-38 and thus should be enjoined.

49. A review of the Legislature’s intent, which is a focus of a preemption analysis,⁴¹ supports this conclusion. Recently, an array of public officials—the Governor, city mayors, county judges, public health authorities, school board trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

50. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴² (2) that explicitly carry the force and effect of *state* laws.⁴³ Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁴⁴ Further, the Governor is the only one with the emergency powers to suspend laws;⁴⁵ use all available public resources, including resources of cities and counties;⁴⁶ and control the movement of persons and occupancy of premises on a statewide level.⁴⁷ The

⁴⁰ Ex. A at ¶¶ 3–5.

⁴¹ *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

⁴² See Tex. Gov’t Code §§ 418.014–.015.

⁴³ *Id.* § 418.012.

⁴⁴ *Id.* § 418.011.

⁴⁵ *Id.* § 418.016(a).

⁴⁶ *Id.* § 418.017.

⁴⁷ *Id.* § 418.018.

Legislature’s intent is clear. In the event of a conflict, Governor Abbott’s emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

51. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁴⁸ But here harmonization *is* possible: school districts’ general authority is not abolished, but merely circumscribed, by GA-38’s prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁴⁹ so too does that general authority not exempt a school district from complying with GA-38. GA-38’s ban on mask mandates functions as a particular limit on school districts’ general authority.

52. The TDA reflects the Legislature’s comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁵⁰ In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

53. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly

⁴⁸ See, e.g., Tex. Gov’t Code § 311.026.

⁴⁹ See *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

⁵⁰ *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) (“Nobody can question that the public schools of this state ‘are quasi public entities and are subject to direct statutory control’ by the Legislature.”).

not included in this grant of emergency authority.⁵¹ And if the Governor’s orders under the TDA could not preempt school district rules, then county judges’ and city mayors’ orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State’s response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA and it is not the law.

54. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued a facemask mandate barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

55. Governor Abbott, using his TDA-granted power,⁵² suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵³ Under the circumstances, Defendants had no authority to issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Order invalid and their conduct *ultra vires*.

⁵¹ See Tex. Gov’t Code § 418.108.

⁵² TEX. GOV’T CODE § 418.016(a).

⁵³ Ex. A at ¶ 5.

56. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁵⁴ The court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means of rules and regulations.”⁵⁵ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁵⁶

57. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁵⁷ The court reasoned that, “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁵⁸ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁵⁹ The El Paso Court of Appeals’ reasoning applies equally here.

58. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

59. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these

⁵⁴ 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

⁵⁵ *Id.* at 824 (citing various dictionaries).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁵⁹ *Id.*

powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State's claims. Defendants will not be able to do so.

II. The State will be Irreparably Injured Absent an Injunction.

60. The State's injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁶⁰

61. There, the Court explained that a century's worth of precedent establishes "the State's 'justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.'"⁶¹ The Court noted that an *ultra vires* suit is a necessary tool to reassert the State's control over local officials who are misapplying or defying State laws.⁶² The Court reasoned: "[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official's specific unauthorized actions."⁶³

62. The Court continued that "[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial."⁶⁴ The Court found that, "[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction."⁶⁵

63. Per *Hollins*, the irreparable injury requirement favors the State.

⁶⁰ 620 S.W.3d 400, 410 (Tex. 2020).

⁶¹ *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

64. The El Paso Court of Appeals rightly viewed *Hollins* “as controlling” on the irreparable injury issue.⁶⁶

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

65. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁶⁷ There was no controversy over Defendants’ Facemask Order until they issued that order, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

66. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials’ attempt to usurp the Governor’s power to control the direction of the State’s response to the COVID-19 pandemic. The status quo favors the State.

67. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38’s ban on facemask mandates.⁶⁸ Each time, the Court overturned these injunctions because they altered the status quo.⁶⁹

68. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁷⁰ The Court explained that these facemask cases turn on a pure legal question: “[W]hich government officials have the legal

⁶⁶ *El Paso County*, 618 S.W.3d at 826.

⁶⁷ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

⁶⁸ See Exhibits B–C.

⁶⁹ *Id.*

⁷⁰ Exhibit D.

authority to decide what the government’s position on [facemasks] will be.”⁷¹ The Court continued: “The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels.”⁷² The Court held that the status quo of “gubernatorial oversight” of disaster-related decisions “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.”⁷³

69. Texas Supreme Court precedent requires that this Court enjoin Defendants’ Facemask Order and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

70. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

71. For the reasons discussed above, the State respectfully prays that this Court:

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order

⁷¹ *Id.* at ¶ 2.

⁷² *Id.*

⁷³ *Id.*

from enforcing Defendants' Facemask Order for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;

- C. Set a date and time for a hearing on the State's application for a temporary injunction;
- D. Declare Defendants' Facemask Order to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Order; (2) rescind their Facemask Order; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and
- H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

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Attorney General of Texas

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Deputy First Assistant Attorney General

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/s/ Halie Elizabeth Daniels

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ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,

Plaintiff,

v.

LUFKIN INDEPENDENT
SCHOOL DISTRICT, BOARD OF
TRUSTEES OF LUFKIN
INDEPENDENT SCHOOL
DISTRICT, LYNN TORRES, in
her official capacity as
superintendent of the Lufkin
Independent School District, and
HAL HENDERSON, KRISTI
GAY, ALLYSON LANGSTON,
JOE CEASAR, MATT KNIGHT,
ANDRA SELF, and SCOTT
SKELTON, in their official
capacities as trustees of the
Lufkin Independent School
District,

DIBOLL INDEPENDENT
SCHOOL DISTRICT, BOARD OF
TRUSTEES OF DIBOLL
INDEPENDENT SCHOOL
DISTRICT, VICKI THOMAS, in
her official capacity as
superintendent of the Diboll
Independent School District, and
ANA CASTILLO, LAMONA
COLEMAN, LAURA BETH
COOPER, ROGELIO "ROY"
SALAZAR, MIKE TERRELL,
NATHAN TERRELL, and JAY
WYATT, in their official capacities
as trustees of the Diboll

IN THE DISTRICT COURT

ANGELINA COUNTY, TEXAS

_____ JUDICIAL DISTRICT

Independent School District
Defendants.

§
§
§
§
§
§
§

**DECLARATION OF HALIE DANIELS IN SUPPORT OF THE STATE OF TEXAS’S VERIFIED
ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is Halie E. Daniels, my date of birth is January 5, 1989, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas’s Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency orders in question and other publicly available materials which this Court will be able to take judicial notice of.

Executed in Travis County, State of Texas, on the 13th day of September 2021.

/s/ Halie Elizabeth Daniels
Declarant

Automated Certificate of eService

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CAUSE NO. 2021-2775-5

STATE OF TEXAS,
Plaintiff,

v.

WACO INDEPENDENT
SCHOOL DISTRICT; BOARD OF
TRUSTEES OF WACO
INDEPENDENT SCHOOL
DISTRICT; DR. SUSAN
KINCANNON in her official
capacity as superintendent of the
Waco Independent School District;
and ANGELA TEKELL,
STEPHANIE KORTEWEG, JOSE
VIDAÑA, CARY DUPUY, KEITH
GUILLORY, JEREMY DAVIS,
and EMILY IAZZETTI in their
official capacities as trustees of
the Waco Independent School
District;

MIDWAY INDEPENDENT
SCHOOL DISTRICT; BOARD OF
TRUSTEES OF MIDWAY
INDEPENDENT SCHOOL
DISTRICT; DR. GEORGE
KAZANAS in his official capacity
as superintendent of the Midway
Independent School District; and
PETE RUSEK, BRAD ALFORD,
DR. ANDY POPEJOY, SUSAN
VICK, PAM WATTS, RICK
TULLIS, and COLIN WITT, in
their official capacities as trustees
of the Midway Independent School
District;

IN THE DISTRICT COURT

MCLENNAN COUNTY, TEXAS

414TH
_____ JUDICIAL DISTRICT

**STATE OF TEXAS’S VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

INTRODUCTION

1. Defendants are deliberately violating state law. In flouting GA-38’s ban on mask mandates, Defendants challenge the policy choices made by the State’s commander in chief during times of disaster.¹ But the Texas Legislature made the Governor—not a patchwork of county judges, city mayors, superintendents, or school boards—the leader of the State’s response to and recovery from a statewide emergency.²

2. GA-38 is a statewide order, issued using statewide emergency powers, with a statewide legal effect. It has the force and effect of state law, and state law preempts inconsistent local law. Defendants disagree with Governor Abbott’s policy choice. But Defendants must recognize the fact that they are not above the law. Waco ISD’s, Midway ISD’s, McGregor ISD’s, and La Vega ISD’s mask mandates should be immediately enjoined.

**REQUEST FOR AN EXPEDITED HEARING ON THE STATE’S APPLICATIONS FOR A
TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION**

3. Given the important and urgent issues raised in this action, the State requests an expedited setting on its applications for a temporary restraining order and a temporary injunction.

¹ See Tex. Gov’t Code § 418.015(c).

² *Id.* § 418.011.

4. The State is seeking non-monetary relief. Discovery is intended to be conducted under Level 1.

PARTIES

5. Plaintiff is the State of Texas.

Waco ISD Defendants

6. Defendant Waco Independent School District (“Waco ISD”) has approximately 14,854 students enrolled from Pre-Kindergarten to Grade 12.

7. Defendant Board of Trustees of Waco ISD is the board of trustees for Waco ISD.

8. Defendant Dr. Susan Kincannon is the superintendent of Waco ISD.

9. Defendants Angela Tekell, Stephanie Korteweg, Jose Vidaña, Cary DuPuy, Keith Guillory, Jeremy Davis, and Emily Iazzetti are members of the Waco ISD Board of Trustees.

10. Defendants may be served with process through Angela Tekell, the president of the Waco ISD Board of Trustees, or through Dr. Susan Kincannon, the Waco ISD superintendent.

Midway ISD Defendants

11. Defendant Midway Independent School District (“Midway ISD”) has approximately 8,348 students enrolled from Pre-Kindergarten to Grade 12.

12. Defendant Board of Trustees of Midway ISD is the board of trustees for Midway ISD.

13. Defendant Dr. George Kazanas is the superintendent of Midway ISD.

14. Defendants Pete Rusek, Brad Alford, Dr. Andy Popejoy, Susan Vick, Pam Watts, Rick Tullis, and Colin Watt are members of the Midway ISD Board of Trustees.

15. Defendants may be served with process through Pete Rusek, the president of the Midway ISD Board of Trustees, or through Dr. George Kazanas, the Midway ISD superintendent.

McGregor ISD Defendants

16. Defendant McGregor Independent School District (“McGregor ISD”) has approximately 1,490 students enrolled from Pre-Kindergarten to Grade 12.

17. Defendant Board of Trustees of McGregor ISD is the board of trustees for McGregor ISD.

18. Defendant James Lenamon is the superintendent of McGregor ISD.

19. Defendants Kyle Paschall, Trenton Rice, Mary Jo Williams, Robbie Jo Allison, Frank Graves, Chad Miller, and David Lillard are members of the McGregor ISD Board of Trustees.

20. Defendants may be served with process through Kyle Paschall, the president of the McGregor ISD Board of Trustees, or through James Lenamon, the McGregor ISD superintendent.

LaVega ISD Defendants

21. Defendant La Vega Independent School District (“La Vega ISD”) has approximately 3,196 students enrolled from Pre-Kindergarten to Grade 12.

22. Defendant Board of Trustees of La Vega ISD is the board of trustees for La Vega ISD.

23. Defendant Dr. Sharon M. Shields is the superintendent of La Vega ISD.

24. Defendants Mildred Watkins, Henry C. Jennings, Raymond Koon, Phil Banacle, Rev. Larry Carpenter, Randy Devorsky, and Brenda Rocha are members of the La Vega ISD Board of Trustees.

25. Defendants may be served with process through Mildred Watkins, the president of the La Vega ISD Board of Trustees, or through Dr. Sharon M. Shields, the La Vega ISD superintendent.

JURISDICTION AND VENUE

26. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over the action under Article V, Section 8 of the Texas Constitution and section 24.007 of the Texas Government Code, as well as under sections 37.001 and 37.003 of the Texas Uniform Declaratory Judgments Act and section 65.021 of the Texas Civil Practice and Remedies Code.

27. Venue is proper in McLennan County under section 15.002(a)(1), (a)(2), and (a)(3), and under § 15.0151 of the Texas Civil Practices and Remedies Code.

BACKGROUND

I. The Texas Disaster Act of 1975 Makes the Governor the Leader of the State's Emergency Response.

28. Two core purposes of the Texas Disaster Act of 1975 ("TDA") are to: (1) mitigate the "damage, injury, and loss of life and property" resulting from a disaster;

and (2) “provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters.”³

29. The TDA names the Governor the “commander in chief” of the State’s response to a disaster⁴ and makes him “responsible for meeting . . . the dangers to the state and people presented by disasters.”⁵

30. The TDA grants the Governor vast powers to meet this obligation, which include the power to: (1) issue executive orders carrying “the force and effect of law”;⁶ (2) control the movement of persons and occupancy of premises;⁷ (3) suspend statutes, orders, or rules;⁸ and (4) use all available public resources, including resources of cities and counties.⁹

31. The TDA makes certain local officials “agents” of the Governor and gives them powers subordinate to the Governor’s.¹⁰ Local officials who preside over an incorporated city or a county—meaning city mayors and county judges—are deemed “emergency management directors.”¹¹ These directors “serve[] as the governor’s designated agent in the administration and supervision of duties under this chapter.”¹² When serving in this capacity, these directors “may exercise the powers granted to the governor under this chapter on an appropriate local scale.”¹³

³ Tex. Gov’t Code § 418.002(1), (3).

⁴ *Id.* § 418.015(c).

⁵ *Id.* § 418.011.

⁶ *Id.* § 418.012.

⁷ *Id.* § 418.018(c).

⁸ *Id.* § 418.016(a).

⁹ *Id.* § 418.017(a).

¹⁰ *Id.* § 418.1015(b).

¹¹ *Id.* § 418.1015(a).

¹² *Id.* § 418.1015(b).

¹³ *Id.*

32. The TDA also allows these same local officials the power to control the movement of persons and the occupancy of premises in a local disaster area.¹⁴ But as a power under “this chapter,” emergency management directors can wield it only in their capacities as the Governor’s “designated agent[s].”¹⁵

33. The TDA does not confer on county judges, city mayors, or any other local officials an independent power to issue emergency orders carrying the force and effect of law.

34. School districts are included in the definition of “local government entities” applicable to the TDA.¹⁶ Although recognizing that school districts are “local governmental entities” under the TDA, the Legislature did not delegate to those school districts specific authority to respond to disasters. Instead, that authority was delegated to the Governor.¹⁷

II. GA-38 Protects Individual Autonomy in Making Personal Health Decisions.

35. On July 29, 2021, Governor Abbott issued executive order GA-38.¹⁸

36. GA-38 seeks to create a uniform response to the COVID-19 pandemic, one that gives individuals the autonomy to make personal health decisions free from government control.¹⁹

¹⁴ *Id.* § 418.108(g).

¹⁵ *Id.* § 418.1015(b).

¹⁶ *See* Tex. Gov’t. Code § 418.004(10).

¹⁷ *See id.* at §§ 418.011–.026.

¹⁸ A copy of GA-38 is attached hereto as Exhibit A. GA-38 is publicly available at <https://tinyurl.com/eo-ga-38>.

¹⁹ *See id.* at p. 1.

37. Towards this end, GA-38 enacts limits to “ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure...”²⁰

38. Also, GA-38 protects businesses and other establishments from “COVID-19-related operating limits.”²¹

39. Further, GA-38 bans most state and local officials from mandating the wearing of facemasks.²² GA-38 contains an exception that allows certain institutions—state supported living centers, government-owned hospitals, and jails—to require the wearing of facemasks.²³

40. To ensure individual autonomy and promote uniformity, GA-38 supersedes conflicting local emergency orders.²⁴ For the same reasons, GA-38 also suspends certain listed statutes and any others “to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.”²⁵

41. Importantly, under GA-38, any person who wants to wear a facemask, get a vaccine, or engage in social distancing can still do so.²⁶ GA-38 “strongly encourage[s]” such practices.²⁷ But GA-38 leaves individuals free to follow the safe practices they should have already mastered over the last 18 months.²⁸

²⁰ *Id.* at pp. 2–3.

²¹ *Id.* at p. 3

²² *Id.* at pp. 3–4.

²³ *Id.* at p. 4.

²⁴ *Id.* at pp. 3–4.

²⁵ *Id.* at pp. 3–5.

²⁶ *Id.* at pp. 4.

²⁷ *Id.* at pp. 1.

²⁸ *Id.* at pp. 3.

42. GA-38's prohibition on local officials' facemask mandates falls comfortably within Governor Abbott's broad power to "control ingress and egress to and from a disaster area and the movement of persons and occupancy of premises in the area."²⁹

43. Specifically, GA-38's ban on facemask mandates controls "ingress and egress" to, "movement" in, and "occupancy of" a disaster area as it authorizes the entry of students into schools who would be prohibited if a school district was to require the wearing of facemasks. GA-38 also controls the conditions individuals may be subjected to when "occupying" premises in a disaster area.

III. Waco ISD Issues a Facemask Mandate in Defiance of GA-38.

44. On or about August 26, 2021, Waco ISD Superintendent, Dr. Susan Kincannon, mandated masks in all Waco ISD facilities beginning August 30, 2021 ("Defendants' Facemask Order").³⁰ On information and belief, the Waco ISD Board of Trustees participated in this decision or failed to take action to prevent Dr. Kincannon from implementing the mask mandate.

45. Defendants' Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

²⁹ Tex. Gov't Code § 418.018(c).

³⁰ WACO ISD, *Beginning Aug. 30, Face Masks will be required inside all Waco ISD facilities*, available at <https://www.wacoisd.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=40&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=42574&PageID=1> (last visited September 10, 2021). A copy of this webpage is attached hereto as Exhibit B.

46. On September 3, 2021, the Office of Attorney General sent a letter to Waco ISD Superintendent Kincannon, warning that the imposition of the mask mandate exceeded her authority and violated GA-38. The letter requested Dr. Kincannon “rescind [the] local policy requiring masks in public schools or alternatively, not enforce it pending the Texas Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.”³¹

47. As of September 13, 2021, Waco ISD and Superintendent Kincannon have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office, and furthermore, Dr. Kincannon has indicated their intent to continue defying GA-38, stating that Waco ISD “will also continue to require masks in all Waco ISD buildings.”³²

IV. Midway ISD Issues a Facemask Mandate in Defiance of GA-38.

48. On or about August 6, 2021, Midway ISD Superintendent, Dr. George Kazanas announced a COVID-19 policy which provides for “mask directives” in certain circumstances (“Defendants’ Facemask Order”).³³ On information and belief, the Midway ISD Board of Trustees participated in this decision or failed to take action

³¹ Exhibit C (September. 3, 2021 letter to Dr. Kincannon).

³² Smith, JB, WACO HERALD TRIBUNE, *Waco-area schools face state threats over masks as children lead record COVID-19 case load*, available at https://wacotrib.com/news/local/education/waco-area-schools-face-state-threats-over-masks-as-children-lead-record-covid-19-case/article_e909d4dc-10fd-11ec-9caa-2f85495d2515.html (last visited September 9, 2021). A copy of this webpage is attached hereto as Exhibit D.

³³ MIDWAY ISD, *Midway ISD Situational Matrix*., available at <https://www.midwayisd.org/cms/lib/TX01000662/Centricity/Domain/2064/Midway%20ISD%20Situational%20Matrix.pdf> (last visited September 10, 2021). A copy of this webpage is attached hereto as Exhibit E.

to prevent Dr. Kazanas from implementing the mask mandate. This policy has been implemented by allowing campuses to issue mask directives requiring “that all students and staff wear a mask while inside [a Midway ISD campus] for ten days.”³⁴

49. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

50. On September 7, 2021, the Office of Attorney General sent a letter to Midway ISD Superintendent Kazanas, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter requested Dr. Kazanas “rescind [the] local policy requiring masks in public schools or alternatively, not enforce it pending the Texas Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.”³⁵

51. As of September 13, 2021, Midway ISD and Superintendent Kazanas have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office.

V. McGregor ISD Issues a Facemask Mandate in Defiance of GA-38.

52. On or about September 6, 2021, McGregor ISD Superintendent James Lenamon implemented a COVID Protocol which includes a masking requirement for

³⁴ Villasana, Joe, KWTX NEWS, *River Valley Intermediate in Waco issues face mask ‘directive’ for 10 days*, available at <https://www.kwtx.com/2021/09/06/river-valley-intermediate-waco-require-face-masks-10-days/> (last visited September 10, 2021). A copy of this webpage is attached hereto as Exhibit F.

³⁵ Exhibit G (Sept. 7, 2021 letter to Dr. Kazanas).

all employees, students, and campus visitors under certain circumstances beginning September 7, 2021 (“Defendants’ Facemask Order”).³⁶ On information and belief, the Midway ISD Board of Trustees participated in this decision or failed to take action to prevent Mr. Lenamon from implementing the mask mandate. This policy has been implemented by requiring masks of all students and staff in the district for seven calendar days beginning Tuesday September 7, 2021.³⁷

53. Defendants’ Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

54. On September 7, 2021, the Office of Attorney General sent a letter to McGregor ISD Superintendent Lenamon, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter requested Mr. Lenamon “rescind [the] local policy requiring masks in public schools or alternatively, not enforce it pending the Texas Supreme Court’s disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.”³⁸

³⁶ MISD COVID UPDATES, *MISD COVID Protocol*, available at http://p8cdn4static.sharpschool.com/UserFiles/Servers/Server_454233/File/COVID19%20Info/3Stage-COVID-Protocol.pdf (last visited September 10, 2021). A copy of this webpage is attached hereto as Exhibit H.

³⁷ Villasana, Joe, KWTX NEWS, *McGregor ISD implements mask mandate for seven day period beginning Tuesday*, available at <https://www.kwtx.com/2021/09/06/mcgregor-isd-implements-mask-mandate-seven-day-period-beginning-tuesday/> (last visited September 10, 2021). A copy of this webpage was attached hereto as Exhibit I.

³⁸ Exhibit J (Sept. 7, 2021 letter to Mr. Lenamon).

55. As of September 13, 2021, McGregor ISD and Superintendent Lenamon have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton's office.

VI. La Vega ISD Issues a Facemask Mandate in Defiance of GA-38.

56. On or about August 24, 2021, La Vega ISD implemented a COVID-19 Mitigation Plan which provides that "the superintendent will implement a district wide mask mandate" under certain circumstances ("Defendants' Facemask Order").³⁹ On information and belief, La Vega ISD's Board of Trustees and Superintendent Shields participated in this decision or failed to take action to prevent implementation of this Plan.

57. Defendants' Facemask Order is barred by GA-38, which explicitly prohibits local officials such as Defendants from issuing facemask mandates in response to COVID-19.

58. On September 7, 2021, the Office of Attorney General sent a letter to McGregor ISD Superintendent Shields, warning that the imposition of the mask mandate exceeded his authority and violated GA-38. The letter requested Dr. Shields "rescind [the] local policy requiring masks in public schools or alternatively, not enforce it pending the Texas Supreme Court's disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office."⁴⁰

³⁹ LA VEGA ISD, *La Vega ISD COVID-19 Mitigation Plan*, available at <https://4.files.edl.io/4348/09/09/21/182940-d97ee84d-05d0-4202-b900-587908a3aa4a.pdf> (last visited September 10, 2021). A copy of this webpage is attached hereto as Exhibit K.

⁴⁰ Exhibit L (Sept. 7, 2021 letter to Dr. Shields).

59. As of September 13, 2021, McGregor ISD and Superintendent Shields have not rescinded the mandatory masking policy in response to the letter from Attorney General Paxton’s office.

CLAIMS FOR RELIEF

60. Pursuant to Texas’s Uniform Declaratory Judgment Act and *ultra vires* and preemption principles, the State alleges as follows:

61. GA-38 has the force and effect of law. GA-38 preempts school district rules that are in direct conflict with its prohibition on mask mandates. School districts’ general statutory authority does not allow them to violate GA-38. In the event of a conflict between school districts’ general authority and GA-38’s specific prohibition, GA-38’s specific prohibition controls. Therefore, the State requests a declaration that the enactment and enforcement of Defendants’ Facemask Orders is invalid, unlawful, and constitutes an *ultra vires* act.

APPLICATIONS FOR A TEMPORARY RESTRAINING ORDER AND A TEMPORARY INJUNCTION

62. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held on a temporary injunction.⁴¹ “A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.”⁴² The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a

⁴¹ *Texas Aeronautics Commission v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971).

⁴² *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.⁴³ These requirements are readily met here.

I. The State will Likely Succeed on the Merits.

63. The State will likely succeed on the merits because (1) GA-38 expressly preempts Defendants’ Facemask Orders and (2) Governor Abbott lawfully suspended Defendants’ statutory authority to issue their Facemask Orders.

A. GA-38 Expressly Preempts Defendants’ Facemask Orders.

64. The point is simple. Governor Abbott’s emergency orders carry the force and effect of law.⁴⁴ His emergency orders, which are issued using statewide powers and which have a statewide legal effect, are effectively “state laws.” Traditional preemption principles dictate that when a state law conflicts with a local law, the state law controls.⁴⁵

65. Here, GA-38 supersedes and preempts any local orders or local requirements that are inconsistent with GA-38.⁴⁶ Defendants’ Facemask Orders imposes facemask requirements that are at odds with, and expressly prohibited by, GA-38. As such, Defendants’ Facemask Orders are expressly preempted by GA-38 and thus should be enjoined.

66. A review of the Legislature’s intent, which is a focus of a preemption analysis,⁴⁷ supports this conclusion. Recently, an array of public officials—the

⁴³ *Id.*

⁴⁴ Tex. Gov’t Code § 418.012.

⁴⁵ See, e.g., *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 18–19 (Tex. 2016); see also *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 593 (Tex. 2018); *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

⁴⁶ Ex. A at pp. 3–4.

⁴⁷ *BCCA Appeal Group, Inc.*, 496 S.W.3d at 8.

Governor, city mayors, county judges, public health authorities, school board trustees, etc.—have been relying on different statutes to issue conflicting orders on the facemask issue. One of these orders *must* control.

67. Of these officials, the Governor is the only one with the authority to issue (1) *statewide* emergency orders⁴⁸ (2) that explicitly carry the force and effect of *state* laws.⁴⁹ Also, the Governor is the only official made explicitly responsible for meeting the dangers to the state and its people presented by a disaster.⁵⁰ Further, the Governor is the only one with the emergency powers to suspend laws;⁵¹ use all available public resources, including resources of cities and counties;⁵² and control the movement of persons and occupancy of premises on a statewide level.⁵³ The Legislature’s intent is clear. In the event of a conflict, Governor Abbott’s emergency orders control; his orders *must* have preemptive effect or else they are meaningless.

68. This conclusion is further supported by the principle that specific statutes control over local ones when a conflict is irreconcilable.⁵⁴ But here harmonization *is* possible: school districts’ general authority is not abolished, but merely circumscribed, by GA-38’s prohibitions. Just as the general authority of a board of trustees does not exempt a school district from complying with a municipal building code,⁵⁵ so too does that general authority not exempt a school district from

⁴⁸ See Tex. Gov’t Code §§ 418.014–.015.

⁴⁹ *Id.* § 418.012.

⁵⁰ *Id.* § 418.011.

⁵¹ *Id.* § 418.016(a).

⁵² *Id.* § 418.017.

⁵³ *Id.* § 418.018.

⁵⁴ See, e.g., *id.* § 311.026.

⁵⁵ See *Port Arthur Indep. Sch. Dist. v. City of Groves*, 376 S.W.2d 330, 334 (Tex. 1964).

complying with GA-38. GA-38's ban on mask mandates functions as a particular limit on school districts' general authority.

69. The TDA reflects the Legislature's comprehensive allocation of powers and responsibilities during declared disasters. School districts are subject to the TDA and GA-38 just like any other state law.⁵⁶ In the context of conflicting orders targeted at the subject of a declared disaster, the TDA is what controls, not the general-authority statutes Defendants will likely rely on when opposing this Petition.

70. Further, any alternative conclusion would have absurd and potentially disastrous results. As noted above, the Legislature gave only the Governor the emergency power to issue orders carrying the force and effect of law. City mayors and county judges are not granted this specific power—and school boards are certainly not included in this grant of emergency authority.⁵⁷ And if the Governor's orders under the TDA could not preempt school district rules, then county judges' and city mayors' orders—orders that are *not* imbued with the force and effect of law—could not preempt either. This inversion of authority would turn dozens of state and local emergency orders into impotent non-binding recommendations. It would make school board trustees, superintendents, and other local officials—individuals who the TDA does not even meaningfully contemplate—the true leaders of the State's response to a statewide emergency. This is not what the Legislature intended when it enacted the TDA, and it is not the law.

⁵⁶ *Univ. Interscholastic League v. Midwestern Univ.*, 152 Tex. 124, 134, 255 S.W.2d 177, 183 (Tex. 1953) (“Nobody can question that the public schools of this state ‘are quasi public entities and are subject to direct statutory control’ by the Legislature.”).

⁵⁷ See Tex. Gov't Code § 418.108.

71. In sum, GA-38 was a lawful use of Governor Abbott’s power to preempt inconsistent local orders. It has the force and effect of state law and must be followed, regardless of whether local officials agree with it. Defendants acted *ultra vires* when they issued facemask mandates barred by GA-38.

B. Governor Abbott Suspended Defendants’ Authority to Issue a Mandatory Facemask Requirement Under the Circumstances.

72. Governor Abbott, using his TDA-granted power,⁵⁸ suspended “any . . . relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to this COVID-19 disaster that are inconsistent with this executive order”⁵⁹ Under the circumstances, Defendants had no authority to issue and enforce a mandatory facemask requirement that is expressly barred by GA-38. This makes Defendants’ Facemask Orders invalid and their conduct *ultra vires*.

73. In *State v. El Paso County*, the El Paso Court of Appeals found that this suspension power should be interpreted broadly.⁶⁰ That court noted that the common dictionary meaning for the term “regulate” included “to control or supervise by means of rules and regulations.”⁶¹ The court found that § 418.018 and the local emergency order issued thereunder fit within the “classic definition of regulation.”⁶²

74. The court then analyzed the term “state business.” The court found that “state business” did not “mean only the activities of state agencies and actors.”⁶³ The

⁵⁸ TEX. GOV’T CODE § 418.016(a).

⁵⁹ Ex. A at ¶ 5.

⁶⁰ 618 S.W.3d 812, 823–25 (Tex. App.—El Paso 2020, no pet.), mandamus dismissed (Nov. 20, 2020).

⁶¹ *Id.* at 824 (citing various dictionaries).

⁶² *Id.*

⁶³ *Id.*

court reasoned that “had the Legislature meant to so limit the term, it would have said ‘official state business,’ as it has done in many other statutes.”⁶⁴ The court found that the local emergency order’s restrictions readily qualified as matters of “state business” under this interpretation.⁶⁵ The El Paso Court of Appeals’ reasoning applies equally here.

75. Realistically, in the context of a worldwide pandemic, even local disaster responses are matters of “state business,” especially when local officials are undermining the Governor’s attempt to craft a uniform statewide response to that pandemic. GA-38’s suspensions are valid under § 418.016(a).

76. To be clear, GA-38 is supported by two independent gubernatorial powers—the power to preempt and the power to suspend. Knock out just one of these powers, and GA-38 is lawful under the other. Defendants will need to invalidate both powers to overcome the State’s claims. Defendants will not be able to do so.

II. The State will be Irreparably Injured Absent an Injunction.

77. The State’s injuries are irreparable. The Supreme Court of Texas recently held as much in *State v. Hollins*.⁶⁶

78. There, the Court explained that a century’s worth of precedent establishes “the State’s ‘justiciable interest in its sovereign capacity in the maintenance and operation of its municipal corporation in accordance with law.’”⁶⁷

The Court noted that an *ultra vires* suit is a necessary tool to reassert the State’s

⁶⁴ *Id.* (citing Tex. Gov’t Code §§ 660.009, 660.043, 1232.003).

⁶⁵ *Id.*

⁶⁶ 620 S.W.3d 400, 410 (Tex. 2020).

⁶⁷ *Id.* (quoting *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926)).

control over local officials who are misapplying or defying State laws.⁶⁸ The Court reasoned: “[This] tool would be useless . . . if the State were required to demonstrate additional, particularized harm arising from a local official’s specific unauthorized actions.”⁶⁹

79. The Court continued that “[t]he [State] would be impotent to enforce its own laws if it could not temporarily enjoin those breaking them pending trial.”⁷⁰ The Court found that, “[w]hen the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.”⁷¹

80. Per *Hollins*, the irreparable injury requirement favors the State.

81. The El Paso Court of Appeals rightly viewed *Hollins* “as controlling” on the irreparable injury issue.⁷²

III. Emergency Injunctive Relief is Necessary to Preserve the Status Quo.

82. “The status quo is the last actual, peaceable, noncontested status which preceded the pending controversy.”⁷³ There was no controversy over Defendants’ Facemask Orders until they issued those orders, which occurred after Governor Abbott enacted GA-38. The State is merely asking to bring Defendants back to their position prior to their facemask mandate.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *El Paso County*, 618 S.W.3d at 826.

⁷³ *Sharma v. Vinmar Intern., Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.).

83. The Texas Supreme Court has given unequivocal direction to lower courts who are considering local officials’ attempt to usurp the Governor’s power to control the direction of the State’s response to the COVID-19 pandemic. The status quo favors the State.

84. Recently, the Texas Supreme Court overturned two temporary restraining orders and one temporary injunction enjoining GA-38’s ban on facemask mandates.⁷⁴ Each time, the Court overturned these injunctions because they altered the status quo.⁷⁵

85. The Court spoke in particularly clear and unmistakable terms in its most recent order dated August 26, 2021.⁷⁶ The Court explained that these facemask cases turn on a pure legal question: “[W]hich government officials have the legal authority to decide what the government’s position on [facemasks] will be.”⁷⁷ The Court continued: “The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels.”⁷⁸ The Court held that the status quo of “gubernatorial oversight” of disaster-related decisions “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.”⁷⁹

⁷⁴ See Exhibits M–O.

⁷⁵ *Id.*

⁷⁶ Ex. O.

⁷⁷ *Id.* at ¶ 2.

⁷⁸ *Id.*

⁷⁹ *Id.*

86. Texas Supreme Court precedent requires that this Court enjoin Defendants' Facemask Orders and restore the status quo of gubernatorial control. Binding precedent still matters, even during a pandemic.

APPLICATION FOR A PERMANENT INJUNCTION

87. The State also asks the Court to set its request for a permanent injunction for a trial on the merits, and after the trial, issue a permanent injunction as set forth above.

PRAYER

88. For the reasons discussed above, the State respectfully prays that this Court:

- A. Through counsel below, enter an appearance for the State in this cause;
- B. Issue a temporary restraining order, which will remain in force until a temporary injunction hearing is held, restraining Defendants and any of their officers, agents, servants, employees, attorneys, representatives, or any other persons in active concert or participation with them who receive actual notice of the Order from enforcing Defendants' Facemask Orders for as long as GA-38 (or a future executive order containing the same prohibitions) remains in effect;
- C. Set a date and time for a hearing on the State's application for a temporary injunction;
- D. Declare Defendants' Facemask Orders to be invalid and unlawful;
- E. Issue preliminary and permanent injunctions that order Defendants to: (1) stop, or order stopped, all enforcement efforts of their Facemask Orders; (2) rescind their Facemask Orders; and (3) refrain from issuing any new emergency restrictions that conflict with GA-38;
- F. Award Supplemental Relief under Tex. Civ. Prac. & Rem. Code § 37.011 as necessary to enforce the declaratory judgment issued by this Court;
- G. Award attorneys' fees and costs; and

H. Award any further relief that the Court deems just and proper.

Respectfully submitted,

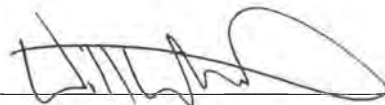
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ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

WACO INDEPENDENT
SCHOOL DISTRICT, *et al.*

Defendants.

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IN THE DISTRICT COURT

McLENNAN COUNTY, TEXAS

____ JUDICIAL DISTRICT

**DECLARATION OF WILLIAM D. WASSDORF IN SUPPORT OF THE STATE OF TEXAS'S
VERIFIED ORIGINAL PETITION AND APPLICATIONS FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF**

State of Texas

County of Travis

My name is William D. Wassdorf, my date of birth is September 7, 1985, and my address is P.O. Box 12548, Capital Station Austin, Texas 78711, USA. I declare under penalty of perjury that the facts contained in the State of Texas's Verified Original Petition and Applications for Temporary and Permanent Injunctive Relief are true and correct. This verification is based on my review of the State and local emergency orders in question and other publicly available materials which this Court will be able to take judicial notice of.

Executed in Travis County, State of Texas, on the 13th day of September 2021.



William D. Wassdorf

Exhibit A



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15 PM O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

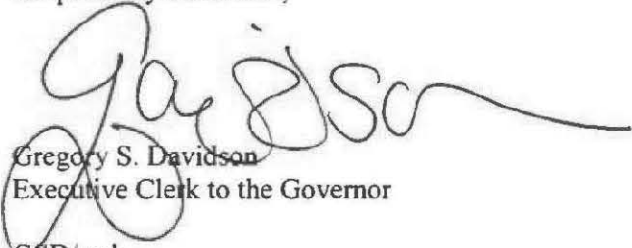
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021

and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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JUL 29 2021

- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
- a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; provided, however, that:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.
 - c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
- a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

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JUL 29 2021

Exhibit B



WACO INDEPENDENT SCHOOL DISTRICT



[Return to Headlines](#)

BEGINNING AUG. 30, FACE MASKS WILL BE REQUIRED INSIDE ALL WACO ISD FACILITIES.

In an email to families and employees, Waco ISD Superintendent Dr. Susan Kincannon announced that face masks would be required inside all schools and other district buildings starting Monday, August 30. Kincannon cited the number of cases reported since the start of the school year and increasingly dire reports from local health care experts as the basis for her decision.

"In my visits to schools this week, I was heartened to see many (but by no means all) of our students and employees voluntarily wearing masks," Kincannon wrote. "Masks have repeatedly been shown to reduce the spread of the virus, and increasing the number of people wearing masks will make our schools a safer place in the midst of this pandemic. We will continue to consult with medical experts and monitor both legal and public health developments. Right now, though, I believe that Waco ISD has to do our part to stop the spread of COVID-19 in our community."

Responding to the decision, Dr. Farley Verner wrote, "As Local Health Authority of the Waco-McLennan County Public Health District, I am in full support of the Waco Independent School District decision to require masks in their schools. Universal masking in the school setting will be expected to significantly reduce the risk of in-school transmission, school outbreaks and school closures. While children are less likely to have severe disease as a result of Covid infection, their ability to transmit infection to others in the home is similar to older people. This then results in increased transmission in the community. Any increase in community transmission at this time will put potentially intolerable stress on the local hospitals and healthcare systems."

Waco ISD schools started classes on Monday, and as of 4 p.m. Thursday, 55 people who have spent time at a campus or other facility reported testing positive for COVID-19. According to Kincannon, the district only saw so many cases reported in such a short period of time at the height of the pandemic last winter.

Kincannon's decision contravenes an executive order issued by the governor last month that prohibited local governmental entities, including school districts, from requiring masks. However, in their most recent public health guidance, the Texas Education Agency announced that the prohibition was not being enforced while courts take up the issue.

"The reports that we are hearing from health care leaders are too urgent to wait until there is a final resolution to the ongoing litigation," Kincannon said when asked about the governor's executive order. "I did not make this decision lightly, and we will continue to monitor legal developments. However, faced with the growing number of cases in our schools and our community, I felt that we had to act now."

(118)

Exhibit C



September 3, 2021

VIA EMAIL

Dr. Susan Kincannon
Superintendent, Waco ISD
PO BOX 27
Waco, TX 76703
susan.kincannon@wacoisd.org

Dear Dr. Kincannon:

Your district recently enacted a local policy mandating that students and faculty wear face masks while at school. This mandate exceeds your district’s authority as restricted by Governor Abbott’s Executive Order GA-38, which states that “[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]”¹

The Governor’s executive orders “have the force and effect of law” and supersede local regulations.² Courts have previously agreed.³ Moreover, the Texas Supreme Court has now issued three orders staying lower court orders seeking to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ Most recently, the Court stated that its stay order applies to “[t]his case, and others like it” and that the status quo of gubernatorial oversight over the wearing of masks at both the state and local levels “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments[.]”⁵

The Texas Supreme Court has spoken. Local court orders purporting to enjoin the Governor’s authority may not be enforced while appellate courts consider the underlying merits of these cases. This office will pursue further legal action, including any available injunctive relief, costs and attorney’s fees, penalties, and sanctions—including contempt of court—available at law

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov’t Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>;

<https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-26-2021/>.

⁵ https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720_STAY%20ORDER%20ISSUED_MAND_FILECOPY.pdf.

against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I ask you to rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Texas Supreme Court's disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.

Sincerely,

A handwritten signature in black ink that reads "Austin Kinghorn". The signature is written in a cursive, flowing style.

Austin Kinghorn
General Counsel

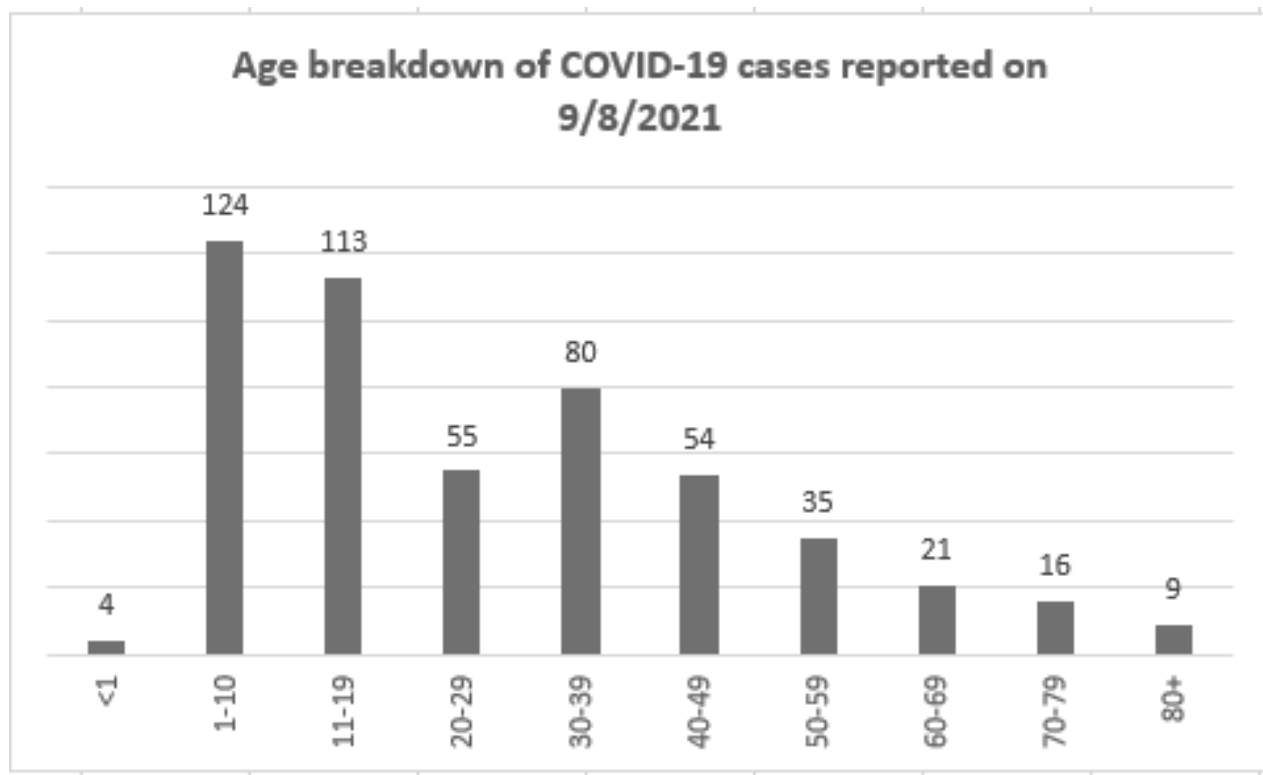
Exhibit D

https://wacotrib.com/news/local/education/waco-area-schools-face-state-threats-over-masks-as-children-lead-record-covid-19-case/article_e909d4dc-10fd-11ec-9caa-2f85495d2515.html

TOP STORY

Waco-area schools face state threats over masks as children lead record COVID-19 case load

JB Smith
Sep 8, 2021



Waco-McLennan County Public Health District, provided

JB Smith

Children and teens accounted for 47% of a record 512 new COVID-19 cases reported Wednesday in McLennan County, as several area school districts found themselves in the crosshairs of legal threats over mask requirements.

Waco-McLennan County Public Health District reported four babies younger than 1 were among the new cases, along with 124 children ages 1 to 10 and 113 youth ages 11 to 19.

The daily report shows five new fatalities ranging in age from 39 to 72, bringing the death toll to 568. Hospitals in McLennan County had 182 COVID-19 patients admitted, 91.4% of whom were unvaccinated.

The unvaccinated also accounted for about 97% of the 42 COVID-19 patients on ventilators, the health district reported.

Health district spokesperson Kelly Craine said health officials are worried about spread among unvaccinated people in general, especially children, who do not have the opportunity to be vaccinated until they are 12.

“It’s important that everyone around them who can be vaccinated be vaccinated,” Craine said. “That’s siblings, parents, grandparents and babysitters.”

Meanwhile, Texas Attorney General Ken Paxton has sent letters to five McLennan County warning them they are not in compliance with Gov. Greg Abbott’s prohibition of mask mandates. Those schools include Connally ISD, which resumed this week with a mask mandate after a temporary closure last week following the deaths of two junior high teachers from COVID-19.

Also on the list are Waco, McGregor, Midway and La Vega ISDs.

In a letter to Waco ISD on Friday, the attorney general demanded that the school district rescind its mask mandate or face “further legal action, including any available injunctive relief, costs and attorney’s fees, penalties and sanctions – including contempt of court.”

Dr. Farley Verner, the health authority for the public health district, has backed Waco ISD’s mask mandate and has urged other school districts to follow suit.

Waco ISD Superintendent Susan Kincannon took issue with the state prohibition in a statement Wednesday.

“I’m not interested in politics” Kincannon wrote. “I’m focused on taking care of kids, and that includes doing what we can as a school district to prevent COVID-19 from spreading in our schools and other facilities. We’ll continue to consult with medical experts and monitor both public health and legal developments. For now, though, we will also continue to require masks inside all Waco ISD buildings.”

The attorney general’s letter points to an Aug. 26 temporary order by the Texas Supreme Court blocking a mask mandate in Bexar County schools. But Kincannon pointed out that in a filing that same week in a Dallas case, Paxton and Abbott **said they would not be enforcing the state order**, leaving it to the discretion of local prosecutors.

“Governor Abbott, Attorney General Paxton and (Texas Education Agency) Commissioner (Mike) Morath need to get their stories straight,” Kincannon said. “The state told a court in Dallas that neither the governor nor the attorney general would be enforcing the mask provisions of the governor’s executive order. The Texas Education Agency told school districts that the mask provisions wouldn’t be enforced while litigation was ongoing. Now, the attorney general is making threats on Facebook.”

Midway ISD’s response to the letter is that it should not be on the list of schools with mask mandates, spokesperson Traci Marlin said. River Valley Intermediate School Principal Paul Offill over the weekend announced a 10-day “directive” to use face masks after high COVID-19 numbers at the campus.

As of Wednesday, the school had 41 cases of COVID-19, making it the biggest hotspot in the district, which had a total of 240 cases.

“We do not have a mandate,” Marlin said Wednesday. “There is no punishment and no mandate. Midway ISD should not be on that list. ... If you listen to what Paul Offill is saying, it is a request from that campus community to keep the doors open because of a higher number of COVID cases.”

She said the directive, while voluntary, seems to be working in getting more children to mask up.

McGregor ISD has issued a three-stage COVID-19 protocol requiring masks on campuses where 2% or more of the population has an active case over a 7-day period. Campuses that reach 5% close for seven days.

Based on current numbers, with 42 cases districtwide, all McGregor campuses are under the mandate through Friday.

La Vega ISD last week announced it was offering incentives to students for masking. Last week 54 cases of COVID-19 were reported throughout the school district, including 22 at La Vega High School.

JB Smith

Managing editor

J.B. Smith is the the Tribune-Herald managing editor. A native of Sulphur Springs, he attended Southwestern University and joined the Tribune-Herald in 1997. He and his wife, Bethany, live in Waco and have two children.

Exhibit E

What we are monitoring PER CAMPUS...				
	Metrics that reflect situation of heightened awareness	Metrics that reflect need for intensive mitigation increase	Metrics that reflect situation to pare down to the essentials	Metrics that reflect conditions preventing reasonable quality and/or safe function of in-person instruction
Always monitoring: community metrics, overall student attendance rates, & staff absences				
% staff COVID cases	0-2.9% of campus staff have COVID	30-4.9% of campus staff have COVID	5.0-6.9% of campus staff have COVID	Inability to adequately staff schools
% student COVID cases	0-2.9% of students have COVID	30-4.9% of students have COVID	5.0-6.9% of students have COVID	>7% of students have COVID
What we are discussing... Tools available for localized response				
Situation feels like:	Heightened awareness & conservative safety approach: Changes to some events	Noticeable reaction and changes to regular school day: Canceling some events	Essential school only to keep doors open / Prepare for possible closure	Close campus temporarily
Responses look like:	General Covid protocols, additional tools may include:	Level 1 tools plus:	Levels 1 & 2 tools plus:	Remote Conferencing instruction for entire campus
Personal safety protocols	Recommended protocols in place	Increase PPE supplies & monitoring	10-day mask directive (campus)	Contact tracing for clearing return of students & staff
	Health messaging for personal prevention - hygiene, mask & vaccine PSAs	Additional testing & symptom monitoring		Deep cleaning of campuses
	Screening/testing measures & 10-day isolation of positive cases	Temporary mask directive for cluster of 3+ in class at elementary level		
	Contact tracing & 10-day student quarantines	Temporary mask directive for cluster in particular program		
	Coordinating vaccine clinics	Heightened campus cleaning efforts		
Building status	Staff quarantined for household cases	Heightened personal hygiene efforts		
	Essential/limited volunteers only	Limit student movement in building	Custodial super cleaning	Additional cleaning/fogging
	All staff cleaning efforts	Enhanced evening and weekend cleaning		
Instructional continuity & Extracurriculars	In-person events, often modified for spacing and/or virtual option	Possible limitations to travel, events	Bring home supplies daily (iPads)	Distribution of classroom supplies
	Review extracurricular protocols	PE outside (weather permitting)	No travel, no events	Dedicated engagement efforts
	Could move to UIL only events	Required masks in small group instruction & music	Possible closing of an individual classroom or indoor program	Technology assistance (passwords, wifi)
	Look for virtual options for activities			Alternative assignments for non-teaching staff
	Limited indoor audiences & in-person events/meetings			No extracurricular events
Food services	Review student travel requests			
	Expanded lunch locations on campus	Lower numbers eating lunch together	Lower numbers eating lunch together	Curbside food service & delivery expanded for all students
	Curbside pick up available for virtual students			
IMPORTANT NOTES REGARDING IMPLEMENTATION				
1. There is no cut-and-dry movement from one tier to another. Situations progress, as do responses that may be implemented. Listed responses in each tier are akin to a toolkit of possible tools to use, not a recipe to follow.				
2. Scenario monitoring and decisions for responses are implemented BY CAMPUS (not district-wide), or could even be implemented only within a program (e.g. only for band, only for football).				
3. Campus dashboards are updated daily for review.				
4. HR Department are monitoring staff absences.				
5. Decisions are made with the best information available at the time and are subject to change. Changes in state or county guidelines may also impact response protocols.				

Exhibit F

ADVERTISEMENT

River Valley Intermediate in Waco issues face mask 'directive' for 10 days

COVID-19 cases rise and principal asks community for help



River Valley Intermediate Principal Paul Offill (You Tube and Facebook)

By Joe Villasana

Published: Sep. 6, 2021 at 3:15 PM CDT



WACO, Texas (KWTX) - In a You Tube video newsletter, River Valley Intermediate Principal Paul Offill asked the community for help mitigating the spread of COVID-19 and announced his school has asked students and staff to wear face masks for ten days beginning Tuesday, September 7.

"We've got some crazy COVID numbers in our campus and we're going to ask for your help and our student's help to do some things in our campus to help slow that down," said Offill.

"We are at a higher percentage than we would like to be and so, beginning Tuesday, we will issue a mask directive and ask that all students and staff wear a mask while inside River Valley for ten days," the principal said.

The mask directive is supposed to end on September 17. On that date, the school will re-evaluate to determine how it moves forward.

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In that letter, Haines said it is "certainly appropriate to directly target clusters of cases with a strong approach such as temporarily closing a classroom or program, temporarily implementing localized mask directives, or urging asymptomatic testing of those near a cluster."

The superintendent further explained that by "focusing on each case's unique circumstance, we are careful not to overreach to impact other students, classes and families in an unwarranted way. Most importantly, those who are not affected are able to continue with school instruction and learning as unhindered as possible, in as normal a way as we can while having school amidst a pandemic."

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Offill reminded parents the school's goal is to always offer face-to-face instruction. "In asking you for help, that is our end goal," the principal said.

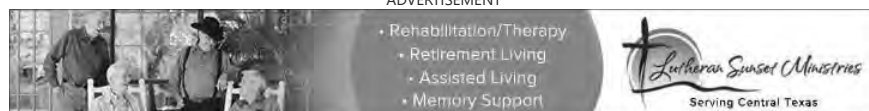


The school is asking parents to please keep their children at home if they are sick. "If you child has symptoms, or fever ... if they're not feeling good ... we ask that you please keep them home," Offill said.

The principal said parents will be notified if their child was directly exposed to someone who tested positive for the virus.

"We just ask that you follow CDC guidance for quarantining," Offill said as he reminded parents that the school district is offering a "virtual conferencing" option for students who are quarantining at home.

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The principal also asked parents to speak to their children to remind them about keeping their hands to themselves and to wash their hands regularly at school and at home.

"Our students will realize we need their help and they are old enough to be responsible," he said.

In order to allow for more social distancing, the school will also begin offering two lunch locations.

"Each grade, the lunch will be split in half. Some students will be in the cafeteria and some will be in the sixth grade gym for lunch and that will allow us to provide even more spacing than we were able to do at the beginning of the year," Offill said.

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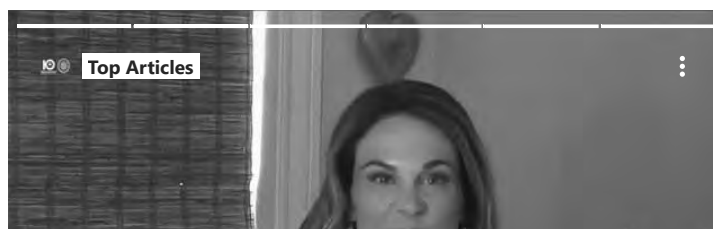


Exhibit G



September 7, 2021

VIA EMAIL

Dr. George Kazanas
Superintendent, Midway ISD
13885 Woodway Dr
Woodway, TX 76712
george.kazanas@midwayisd.org

Dear Dr. Kazanas:

Your district recently enacted a local policy mandating that students and faculty wear face masks while at school. This mandate exceeds your district’s authority as restricted by Governor Abbott’s Executive Order GA-38, which states that “[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]”¹

The Governor’s executive orders “have the force and effect of law” and supersede local regulations.² Courts have previously agreed.³ Moreover, the Texas Supreme Court has now issued three orders staying lower court orders seeking to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ Most recently, the Court stated that its stay order applies to “[t]his case, and others like it” and that the status quo of gubernatorial oversight over the wearing of masks at both the state and local levels “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments[.]”⁵

The Texas Supreme Court has spoken. Local court orders purporting to enjoin the Governor’s authority may not be enforced while appellate courts consider the underlying merits of these cases. This office will pursue further legal action, including any available injunctive relief, costs and attorney’s fees, penalties, and sanctions—including contempt of court—available at law

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov’t Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>;

<https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-26-2021/>.

⁵ https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720_STAY%20ORDER%20ISSUED_MAND_FILECOPY.pdf.

against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I ask you to rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Texas Supreme Court's disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.

Sincerely,

A handwritten signature in cursive script that reads "Austin Kinghorn". The signature is written in dark ink and is positioned above the typed name.

Austin Kinghorn
General Counsel

Exhibit H

STAGE 1: PREVENTION & MITIGATION	STAGE 2: MODIFIED OPERATIONS	STAGE 3: CAMPUS CLOSURE
-------------------------------------	---------------------------------	----------------------------

As long as the COVID positivity rate on a campus remains below 2% during a period of seven calendar days, masks will remain optional for all employees, students, and campus visitors.

If the COVID positivity rate on a campus reaches or exceeds 2% within a seven calendar day period, all employees, students, and campus visitors will be required to wear a face covering for seven calendar days or until the positivity rate drops below 2%, whichever is longer.

If the COVID positivity rate on a campus reaches or exceeds 5% within a seven calendar day period, the campus will be closed for a period of seven calendar days.

Campus COVID Rate < 2%	2% ≤ Campus COVID Rate ≤ 5%	Campus COVID Rate ≥ 5%
FACE COVERINGS ENCOURAGED BUT NOT REQUIRED	FACE COVERINGS REQUIRED	CAMPUS CLOSED FOR SEVEN CALENDAR DAYS
QUARANTINING OF CLOSE CONTACTS IN THE SAME HOUSEHOLD	QUARANTINING OF CLOSE CONTACTS IN THE SAME HOUSEHOLD	Disinfection of campus including buildings and buses
Standard schedule for all students	Standard schedule for all students	All campus auxiliary areas are closed
Monitoring COVID trends	Monitoring COVID trends	Extracurricular activities on hold or canceled
Limited visitor access	Limited visitor access	
Daily intensive cleaning practices	Daily intensive cleaning practices	
Frequent cleaning of common areas	Frequent cleaning of common areas	
Deep cleaning in classrooms with identified cases	Deep cleaning in classrooms with identified cases	
Short-term campus closure if necessary	Short-term campus closure if necessary	

Per CDC guidance issued on 1/29/21 and updated on 6/10/21 and 8/27/21, face coverings are required on school buses. All passengers two years of age and older are required to wear face masks on MISD school buses.

Methodology:

The school's population is the combined number of students and employees on that campus.

The positivity rate is determined by the number of students and employees that test positive for COVID within the last week divided by the school's population.

Seven calendar days is based on a rolling seven calendar day average from each day.

Notes:

Decisions are made with the best information available at the time and are subject to change with limited notice.

Per TEA guidance, individuals who are vaccinated or who have tested positive for COVID in the past 90 days are NOT considered close contacts. Proof of vaccination or a positive test may be submitted to be considered for exemption from the quarantining requirement.

Exhibit I

ADVERTISEMENT

McGregor ISD implements mask mandate for seven day period beginning Tuesday



File Photo (KEYC News Now)

By Joe Villasana

Published: Sep. 6, 2021 at 1:15 PM CDT



McGREGOR, Texas (KWTX) - The McGregor Independent School District in Central Texas announced on Facebook Monday it will implement a face mask mandate for all students and staff in the district.

The masking requirement will last for seven calendar days beginning Tuesday, September 7.

"Thank you in advance for your cooperation. I join you in hoping that this temporary step will be short lived," said McGregor Superintendent James Lenamon in a Facebook post.

The school district revealed that as of Monday afternoon, the rolling seven-day positivity rate for new COVID cases on each campus are as follows:

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Isbill Junior High - 2.79%

McGregor High School - 3.53%

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"As outlined in our three-stage plan, these percentages mean that there will be a masking requirement for all students and staff in the district," said Lenamon.

"It is our hope that the number of positive cases continues to decline and that we can return to Stage 1 as soon as possible."

The school district added a [COVID 19 FAQs](#) page that "will be updated as needed."

The district said its [COVID Dashboard](#) features a color-coded status for each campus as well as a reporting of the seven-day rolling positivity rate.

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This feature will be updated daily and will be used to make any future decisions related to masking or closures, the school district said.

The school district also reminded parents CDC guidance states individuals over 2 years old should wear a mask while on public transportation, including school buses.

"Beginning Tuesday, September 7th, all bus riders will need to wear a face covering," the district said.

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2/7

Exhibit J



September 7, 2021

VIA EMAIL

Mr. James Lenamon
Superintendent, McGregor ISD
PO BOX 356
McGregor, TX 76657
jlenamon@mcgregor-isd.org

Dear Mr. Lenamon:

Your district recently enacted a local policy mandating that students and faculty wear face masks while at school. This mandate exceeds your district’s authority as restricted by Governor Abbott’s Executive Order GA-38, which states that “[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]”¹

The Governor’s executive orders “have the force and effect of law” and supersede local regulations.² Courts have previously agreed.³ Moreover, the Texas Supreme Court has now issued three orders staying lower court orders seeking to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ Most recently, the Court stated that its stay order applies to “[t]his case, and others like it” and that the status quo of gubernatorial oversight over the wearing of masks at both the state and local levels “should remain in place while the court of appeals, and potentially this Court, examine the parties’ merits arguments[.]”⁵

The Texas Supreme Court has spoken. Local court orders purporting to enjoin the Governor’s authority may not be enforced while appellate courts consider the underlying merits of these cases. This office will pursue further legal action, including any available injunctive relief, costs and attorney’s fees, penalties, and sanctions—including contempt of court—available at law

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov’t Code §§ 418.011–.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>;

<https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-26-2021/>.

⁵ https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720_STAY%20ORDER%20ISSUED_MAND_FILECOPY.pdf.

against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I ask you to rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Texas Supreme Court's disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.

Sincerely,

A handwritten signature in cursive script that reads "Austin Kinghorn". The signature is written in dark ink on a light background.

Austin Kinghorn
General Counsel

Exhibit K



LA VEGA ISD COVID-19 MITIGATION PLAN

La Vega ISD will implement a multi-layered approach to encouraging the wearing of masks and getting the COVID-19 vaccine by students.

The multi-layered mitigation plan's objective is to reduce/prevent the spread of COVID-19 in our schools that could result in severe illness, hospitalization, and loss of life. In addition, La Vega ISD is striving to keep our school doors open to provide quality in-person instruction to our students thus allowing parents to continue to work.

Phase One – Students choose to wear masks or not. Findings of this phase have determined that at least 177 students and staff have had to isolate or quarantine due to testing positive or being a close contact. Based on the CDC and Waco McLennan County Health District recommendations, each of these students and staff can be quarantined from 10 to 14 days.

CDC continues to recommend the 14-day quarantine period as the best way to decrease spread, however, the following options to shorten quarantine are acceptable alternatives.

1. Quarantine can end after Day 10 without a test and if no symptoms have been reported.
2. Quarantine can end after Day 7 if a diagnostic (PCR or Antigen) specimen tests negative and if no symptoms were reported. For testing, the diagnostic specimen could be collected up to 48 hours prior to the proposed end of quarantine. For example, for a quarantine that would end on Day 7, the diagnostic specimen could be collected starting on Day 5 or thereafter.
3. Individuals who are fully vaccinated do not need to quarantine unless they have symptoms. If they do develop symptoms, then they should see their healthcare provider.

Phase Two – Campuses will implement a campus-specific incentive plan that acknowledges students that **wear masks** during the school day. Forms of acknowledgment will be defined by each campus. The District will offer incentives to eligible students getting the **COVID-19 vaccination** with parent permission. Students showing proof of receiving the vaccination will receive a \$25 gift card for each dose to use for school supplies and other needs.

Phase Three – In the event that Phase Two does not reduce and prevent the spread of COVID-19, the superintendent will implement a **district-wide mask mandate**. With guidance from the McLennan County Health District the threshold for the mask requirement is greater than 2% positive rate. **Threshold** for Phase Three - (Positivity Rate >2%) – Mask Mandatory for 28 days or until the rate of positive cases drops below 2%

Phase Four – If Phase Three is not effective in reducing and preventing the spread of COVID-19, the McLennan County Health District has the authority to **close a campus, grade level, district facility, or the entire District**. **Threshold** for Phase 4 - (Positivity Rate >10%). The typical duration of a closure is one to two weeks.

Exhibit L



September 7, 2021

VIA EMAIL

Dr. Sharon M. Shields
Superintendent, La Vega ISD
400 E Loop 340
Waco, TX 76705
sharon.shields@lavegaisd.org

Dear Dr. Shields:

Your district recently enacted a local policy mandating that students and faculty wear face masks while at school. This mandate exceeds your district's authority as restricted by Governor Abbott's Executive Order GA-38, which states that "[n]o governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering[.]"¹

The Governor's executive orders "have the force and effect of law" and supersede local regulations.² Courts have previously agreed.³ Moreover, the Texas Supreme Court has now issued three orders staying lower court orders seeking to enjoin the Governor from asserting his authority to preempt local face-mask mandates.⁴ Most recently, the Court stated that its stay order applies to "[t]his case, and others like it" and that the status quo of gubernatorial oversight over the wearing of masks at both the state and local levels "should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments[.]"⁵

The Texas Supreme Court has spoken. Local court orders purporting to enjoin the Governor's authority may not be enforced while appellate courts consider the underlying merits of these cases. This office will pursue further legal action, including any available injunctive relief, costs and attorney's fees, penalties, and sanctions—including contempt of court—available at law

¹ See Executive Order GA-38, issued July 29, 2021, available at: https://gov.texas.gov/uploads/files/press/EO-GA-38_continued_response_to_the_COVID-19_disaster_IMAGE_07-29-2021.pdf.

² See, e.g., Tex. Gov't Code §§ 418.011-.012.

³ See, e.g., *State v. El Paso Cty.*, 618 S.W.3d 812 (Tex. App.—El Paso 2020, no pet.).

⁴ <https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-15-2021.aspx>;

<https://www.txcourts.gov/supreme/orders-opinions/2021/august/august-26-2021/>.

⁵ https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/21-0720_STAY%20ORDER%20ISSUED_MAND_FILECOPY.pdf.

against any local jurisdiction and its employees that persist in enforcing local mask mandates in violation of GA-38 and any applicable court order.

I ask you to rescind your local policy requiring masks in public schools or, alternatively, not enforce it pending the Texas Supreme Court's disposition of the cases before it involving this issue. Otherwise, you face potential legal action brought by this office.

Sincerely,

A handwritten signature in cursive script that reads "Austin Kinghorn". The signature is written in dark ink on a light background.

Austin Kinghorn
General Counsel

Exhibit M

IN THE SUPREME COURT OF TEXAS

No. 21-0720

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

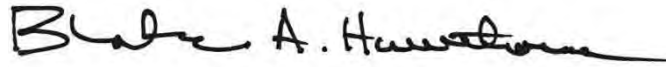
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Thursday, August 26, 2021.

A handwritten signature in black ink, appearing to read "Blake A. Hawthorne". The signature is fluid and cursive, with a long horizontal stroke at the end.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

Exhibit N

IN THE SUPREME COURT OF TEXAS

No. 21-0687

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

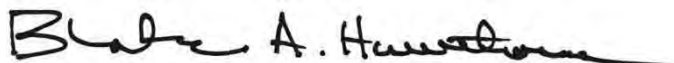
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The order on Plaintiffs' Verified Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Declaratory Judgment dated August 10, 2021, in Cause No. 2021CI16133, styled *City of San Antonio and Bexar County v. Greg Abbott, in his official capacity as Governor of Texas, in the 45th District Court of Bexar County, Texas*, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

Exhibit O

IN THE SUPREME COURT OF TEXAS

No. 21-0686

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE
STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

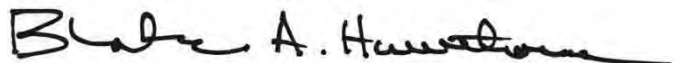
ORDERED:

1. Relator's emergency motion for temporary relief, filed August 13, 2021, is granted. The Temporary Restraining Order, dated August 10, 2021, in Cause No. DC-21-10101, styled *Clay Jenkins, in his Official Capacity v. Greg Abbott, in his Official Capacity as Governor of the State of Texas*, in the 116th District Court of Dallas County, Texas, is stayed pending further order of this Court, except to the extent that it sets a hearing on plaintiffs' request for a temporary injunction.

2. The trial court's temporary restraining order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's hearing and decision on plaintiffs' request for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Sunday, August 15, 2021.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

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Will Wassdorf on behalf of Will Wassdorf
Bar No. 24103022
will.wassdorf@oag.texas.gov
Envelope ID: 57186227
Status as of 9/13/2021 2:14 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kimberly Gdula		Kimberly.Gdula@oag.texas.gov	9/13/2021 1:18:49 PM	SENT
Christopher Hilton		christopher.hilton@oag.texas.gov	9/13/2021 1:18:49 PM	SENT
William D.Wassdorf		will.wassdorf@oag.texas.gov	9/13/2021 1:18:49 PM	SENT
Thomas Ray		thomas.ray@oag.texas.gov	9/13/2021 1:18:49 PM	SENT



HOME (/) > NEWS (/NEWS) > NEWS RELEASES (/NEWS/RELEASES) >
PAXTON FILES MULTIPLE LAWSUITS AGAINST SCHOOL DISTRICTS DEFYING STATE LAW

September 10, 2021 | Press Release | COVID-19 (/news/categories/covid-19)

Paxton Files Multiple Lawsuits Against School Districts Defying State Law

SHARE THIS:

51

Attorney General Ken Paxton announced the filing today of six lawsuits against six school districts defying Governor Abbott's Executive Order GA-38 regarding mask mandates: Richardson, Round Rock, Galveston, Elgin, Spring and Sherman Independent School Districts. In the 2021-2022 school year, several school districts across the state have refused to follow state law — the Texas Disaster Act and Executive Order GA-38 — which place the Governor in charge of the statewide response to the COVID-19 pandemic. The Office of the Attorney General anticipates the filing of additional lawsuits if school districts and other governmental entities continue to defy state law.

“Not only are superintendents across Texas openly violating state law, but they are using district resources—that ought to be used for teacher merit raises or other educational benefits—to defend their unlawful political maneuvering,” Attorney General Ken Paxton said. “If districts choose to spend their money on legal fees, they must do so knowing that my office is ready and willing to litigate these cases. I have full confidence that the courts will side with the law – not acts of political defiance.”

To view a list of schools not in compliance with GA-38, click [here](https://www.texasattorneygeneral.gov/covid-governmental-entity-compliance) (<https://www.texasattorneygeneral.gov/covid-governmental-entity-compliance>).

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Related News

Paxton Secures Temporary Restraining Order Against Paris ISD in Mask Mandate Lawsuit (/news/releases/paxton-secures-temporary-restraining-order-against-parisisd-mask-mandate-lawsuit)

Attorney General Ken Paxton announced that a Lamar County district court issued a temporary restraining order against Paris ISD regarding its unlawful mask mandate.

September 14, 2021 | Press Release

Texas Supreme Court Sides with Paxton Regarding Ban on Mask Mandates (/news/releases/texas-supreme-court-sides-paxton-regarding-ban-mask-mandates)

Attorney General Ken Paxton commends the Texas Supreme Court’s decision to grant the emergency motion for temporary relief in the case of Abbott v. San Antonio, keeping the decision to enforce mask mandates with the governor, not local government entities.

August 26, 2021 | Press Release

Paxton Successfully Sues Vaccine-Mandating School District (/news/releases/paxton-successfully-sues-vaccine-

Appendix 344

mandating-school-district)

Last Thursday, August 19, Attorney General Paxton sued the San Antonio Independent School District and its superintendent for mandating all district employees receive a COVID-19 shot in violation of Governor Abbott’s Executive Order 38, which bans public entities from requiring individuals to receive COVID-19 vaccines administered under the Federal Drug Administration’s (FDA’s) “emergency use authorization.”

August 23, 2021 | Press Release

[See all News \(/news\)](#)

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PO Box 12548

Austin, TX 78711-2548

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opinions)**

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(/initiatives)**

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(/careers)**

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Money Goes
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State Agency**

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(/ada-
compliance)** **Contracts
(https://oagtx.force.c**

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office/cost-
efficiency-
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**Texas Attorney General** ✓

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I have filed 9 more lawsuits against the following ISDs for defying Exec. Order 38: La Vega, McGregor, Midway, Waco, Diboll, Lufkin, Longview, Paris and Honey Grove.

There will be more to come as lawlessness continues across the state.

texasattorneygeneral.gov/covid-governme...



Tweet your reply



CAUSE NO. 90612

STATE OF TEXAS,
Plaintiff,

v.

PARIS INDEPENDENT SCHOOL
DISTRICT, BOARD OF TRUSTEES
OF PARIS INDEPENDENT SCHOOL
DISTRICT, PAUL JONES, in his
official capacity as superintendent of
the Paris Independent School District,
and GEORGE FISHER, JENNY
WILSON, BECKI NORMENT,
CLIFTON FENDLEY, TERRY
DAVIS, MANDEEP CHATHA-
HOMER, and DR. GORDON STROM,
JR., in their official capacities as
trustees of the Paris Independent
School District,
Defendants.

IN THE DISTRICT COURT

FILED FOR RECORD
LAMAR COUNTY, TEXAS
2021 SEP 13 PM 3:50
SHAWNTEL GOLDEN
DISTRICT CLERK
BY _____ DEPUTY

LAMAR COUNTY, TEXAS

Lamar County - 6th District Court
JUDICIAL DISTRICT

**ORDER GRANTING STATE OF TEXAS'S APPLICATION FOR
A TEMPORARY RESTRAINING ORDER**

Before the Court is the State of Texas's Application for a Temporary Restraining Order. After due consideration of the motion, briefing, the evidence, and the law, the Court finds that this application should be granted.

The Court finds that Defendants do not have authority to issue or enforce a facemask mandate in light of Governor Abbott's executive order GA-38.

The Court finds that the State of Texas is thus likely to prevail on the merits and that a temporary restraining order is required to preserve the status quo and to prevent the irreparable harm of the continued violation of state law absent injunctive relief.

It is therefore ORDERED that the State of Texas's Application for a Temporary Restraining Order is GRANTED.

It is FURTHER ORDERED that Defendants are prohibited from enforcing a facemask mandate for as long as GA-38 (or a future executive order containing the same prohibitions) remain in effect.

It is FURTHER ORDERED that the State of Texas is exempt from the requirement to post bond.

It is FURTHER ORDERED a hearing on the State of Texas's application for temporary injunction is set for the 21st day of Sept 2021 at 9:00 A.M. The purpose of this hearing shall be to determine whether the Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits.

Signed this 13th day of Sept, 2021 at 2:56 P.M.



JUDGE PRESIDING

CAUSE NO. 21-1471-C368

STATE OF TEXAS,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
ROUND ROCK INDEPENDENT	§	
SCHOOL DISTRICT, BOARD OF	§	
TRUSTEES OF ROUND ROCK	§	
INDEPENDENT SCHOOL	§	
DISTRICT, DR. HAFEDH AZAIEZ in	§	
his official capacity as superintendent	§	WILLIAMSON COUNTY, TEXAS
of the Round Rock Independent School	§	
District, and AMY WEIR, AMBER	§	
FELLER, TIFFANIE HARRISON,	§	
DR. JUN XIAO, DR. MARY BONE,	§	
CORY VESSA, and DANIELLE	§	
WESTON, in their official capacities as	§	Williamson County - 368th Judicial District Court
trustees of the Round Rock	§	
Independent School District,	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

**ORDER GRANTING STATE OF TEXAS’S APPLICATION FOR
A TEMPORARY RESTRAINING ORDER**

Before the Court is the State of Texas’s Application for a Temporary Restraining Order. After due consideration of the motion, briefing, the evidence, and the law, the Court finds that this application should be granted.

The Court finds that Defendants do not have authority to issue or enforce a facemask mandate in light of Governor Abbott’s executive order GA-38.

The Court finds that the State of Texas is thus likely to prevail on the merits and that a temporary restraining order is required to preserve the status quo and to

prevent the irreparable harm of the continued violation of state law absent injunctive relief.


It is therefore ORDERED that the State of Texas's Application for a Temporary Restraining Order is GRANTED.

It is FURTHER ORDERED that Defendants are prohibited from enforcing a facemask mandate for as long as GA-38 (or a future executive order containing the same prohibitions) remain in effect.

It is FURTHER ORDERED that the State of Texas is exempt from the requirement to post bond.

It is FURTHER ORDERED a hearing on the State of Texas's application for temporary injunction is set for the 28 day of September 2021 at 9 a.m.. The purpose of this hearing shall be to determine whether the Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits.

Signed this 14 day of September, 2021 at 11:17 a.m.
9/14/2021 11:17:00 AM


JUDGE PRESIDING

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Bonnie Chester on behalf of Kimberly Gdula
Bar No. 24052209
bonnie.chester@oag.texas.gov
Envelope ID: 57115144
Status as of 9/10/2021 8:12 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Hilton		christopher.hilton@oag.texas.gov	9/9/2021 8:51:23 PM	SENT
Tamera Martinez		tamera.martinez@oag.texas.gov	9/9/2021 8:51:23 PM	SENT
Kimberly Gdula		Kimberly.Gdula@oag.texas.gov	9/9/2021 8:51:23 PM	SENT
Bonnie Chester		bonnie.chester@oag.texas.gov	9/9/2021 8:51:23 PM	SENT

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00472-CV

In re Round Rock Independent School District, Board of Trustees of Round Rock Independent School District, Dr. Hafeedh Azaiez, in his official capacity as Superintendent of Round Rock Independent School District, and Amy Weir, Amber Feller, Tiffanie Harrison, Dr. Jun Xiao, Dr. Mary Bone, Cory Vessa, Danielle Weston, in their official capacities as trustees of the Round Rock Independent School District

ORIGINAL PROCEEDING FROM WILLIAMSON COUNTY

ORDER

PER CURIAM

Relators have filed a petition for writ of mandamus and a motion for emergency stay. We grant the motion and stay the district court's temporary restraining order prohibiting the Round Rock Independent School District from enforcing its face mask requirement. *See* Tex. R. App. P. 52.10(a)–(b). We order the State to file a response to the petition for writ of mandamus no later than 5:00 P.M. on September 21, 2021.

It is ordered on September 17, 2021.

Before Justices Baker, Triana, and Smith

Filed 11:23A m

SEP 15 2021

Sarah Loucks
District Clerk, Bastrop County

CAUSE NO. 1905-21

STATE OF TEXAS,

Plaintiff,

V.

ELGIN INDEPENDENT SCHOOL DISTRICT, BOARD OF TRUSTEES OF ELGIN INDEPENDENT SCHOOL DISTRICT, DR. JODI DURON in her official capacity as superintendent of the Elgin Independent School District, and BYRON MITCHELL, BETH WALTERSCHEIDT, ANGIE EDMON, JUANITA VALARIE NEIDIG, PETE BEGA, JD HARKINS, and DAVID GLASS in their official capacities as trustees of the Elgin Independent School District,

Defendants.

IN THE DISTRICT COURT

BASTROP COUNTY, TEXAS

JUDICIAL DISTRICT

ORDER GRANTING STATE OF TEXAS'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Before the Court is the State of Texas's Application for a Temporary Restraining Order. After due consideration of the motion, briefing, the evidence, and the law, the Court finds that this application should be ~~granted~~ denied.

~~The Court finds that Defendants do not have authority to issue or enforce a facemask mandate in light of Governor Abbott's executive order GA-88.~~

L

~~The Court finds that the State of Texas is thus likely to prevail on the merits and that a temporary restraining order is required to preserve the status quo and to prevent the irreparable harm of the continued violation of state law absent injunctive relief.~~

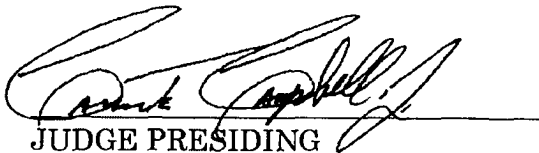
It is therefore ORDERED that the State of Texas's Application for a Temporary Restraining Order is ~~GRANTED~~ DENIED.

It is ~~FURTHER ORDERED that Defendants are prohibited from enforcing a facemask mandate for as long as GA 38 (or a future executive order containing the same prohibitions) remain in effect.~~

~~It is FURTHER ORDERED that the State of Texas is exempt from the requirement to post bond.~~

It is FURTHER ORDERED a hearing on the State of Texas's application for temporary injunction is set for the 6th day of Oct 2021 at 1:30 pm. ~~The purpose of this hearing shall be to determine whether the Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits.~~

Signed this 15th day of Sept., 2021 at 10:20 am


JUDGE PRESIDING

21 SEP 16 PM 2:38

IN THE DISTRICT COURT
[Signature]
 DISTRICT CLERK
 DALLAS COUNTY, TEXAS

GALVESTON COUNTY, TEXAS

10th JUDICIAL DISTRICT

Appendix 355

~~prevent the irreparable harm of the continued violation of state law absent injunctive relief.~~

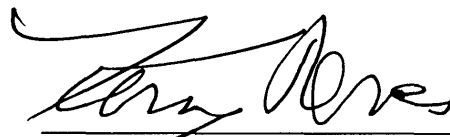
~~It is therefore ORDERED that the State of Texas's Application for a Temporary Restraining Order is GRANTED.~~

~~It is FURTHER ORDERED that Defendants are prohibited from enforcing a facemask mandate for as long as GA-38 (or a future executive order containing the same prohibitions) remain in effect.~~

~~It is FURTHER ORDERED that the State of Texas is exempt from the requirement to post bond.~~

It is FURTHER ORDERED a hearing on the State of Texas's application for temporary injunction is set for the 28TH day of SEPT. 2021 at 9:00 AM. The purpose of this hearing shall be to determine whether ^A ~~the Temporary Restraining Order should be made a~~ temporary injunction SHOULD BE GRANTED pending a full trial on the merits.

Signed this 16TH day of SEPT., 2021 at 2:20 PM


JUDGE PRESIDING



GOVERNOR GREG ABBOTT

July 2, 2020

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:30 PM O'CLOCK
JUL 2 2020

Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-29 relating to the use of face coverings during the
COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 2, 2020

EXECUTIVE ORDER GA 29

Relating to the use of face coverings during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, as Texas reopens in the midst of COVID-19, increased spread is to be expected, and the key to controlling the spread and keeping Texans safe is for all people to consistently follow good hygiene and social-distancing practices; and

WHEREAS, due to recent substantial increases in COVID-19 positive cases, and increases in the COVID-19 positivity rate and hospitalizations resulting from COVID-19, further measures are needed to achieve the least restrictive means for reducing the growing spread of COVID-19, and to avoid a need for more extreme measures; and

WHEREAS, I have joined the medical experts in consistently encouraging people to use face coverings, and health authorities have repeatedly emphasized that wearing face coverings is one of the most important and effective tools for reducing the spread of COVID-19; and

WHEREAS, given the current status of COVID-19 in Texas, requiring the use of face coverings is a targeted response that can combat the threat to public health using the least restrictive means, and if people follow this requirement, more extreme measures may be avoided; and

WHEREAS, wearing a face covering is important not only to protect oneself, but also to avoid unknowingly harming fellow Texans, especially given that many people who go into public may have COVID-19 without knowing it because they have no symptoms; and

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WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by fine;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at 12:01 p.m. on July 3, 2020:

Every person in Texas shall wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household; provided, however, that this face-covering requirement does not apply to the following:

1. any person younger than 10 years of age;
2. any person with a medical condition or disability that prevents wearing a face covering;
3. any person while the person is consuming food or drink, or is seated at a restaurant to eat or drink;
4. any person while the person is (a) exercising outdoors or engaging in physical activity outdoors, and (b) maintaining a safe distance from other people not in the same household;
5. any person while the person is driving alone or with passengers who are part of the same household as the driver;
6. any person obtaining a service that requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to the face, such as while visiting a bank or while obtaining a personal-care service involving the face, but only to the extent necessary for the temporary removal;
7. any person while the person is in a swimming pool, lake, or similar body of water;
8. any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged;
9. any person who is actively providing or obtaining access to religious worship, but wearing a face covering is strongly encouraged;
10. any person while the person is giving a speech for a broadcast or to an audience; or
11. any person in a county (a) that meets the requisite criteria promulgated by

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the Texas Division of Emergency Management (TDEM) regarding minimal cases of COVID-19, and (b) whose county judge has affirmatively opted-out of this face-covering requirement by filing with TDEM the required face-covering attestation form—provided, however, that wearing a face covering is highly recommended, and every county is strongly encouraged to follow these face-covering standards.

Not excepted from this face-covering requirement is any person attending a protest or demonstration involving more than 10 people and who is not practicing safe social distancing of six feet from other people not in the same household.

TDEM shall maintain on its website a list of counties that are not subject to this face-covering requirement pursuant to paragraph number 11. The list can be found at: www.tdem.texas.gov/ga29.

Following a verbal or written warning for a first-time violator of this face-covering requirement, a person's second violation shall be punishable by a fine not to exceed \$250. Each subsequent violation shall be punishable by a fine not to exceed \$250 per violation.

Local law enforcement and other local officials, as appropriate, can and should enforce this executive order, Executive Order GA-28, and other effective executive orders, as well as local restrictions that are consistent with this executive order and other effective executive orders. But no law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order or for related non-violent, non-felony offenses that are predicated on a violation of this executive order; provided, however, that any official with authority to enforce this executive order may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.

This executive order hereby prohibits confinement in jail as a penalty for the violation of any face-covering order by any jurisdiction.

Executive Order GA-28 is hereby amended to delete from paragraph number 15 the phrase: “, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.”

The governor may by proclamation amend this executive order or add to the list of people to whom this face-covering requirement does not apply.

This executive order does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, GA-24, GA-25, GA-27, or GA-28 as amended. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

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Given under my hand this the 2nd
day of July, 2020.



GREG ABBOTT
Governor

ATTESTED BY:



RUTH R. HUGHS
Secretary of State

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JUL 02 2020



GOVERNOR GREG ABBOTT

July 29, 2021

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Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

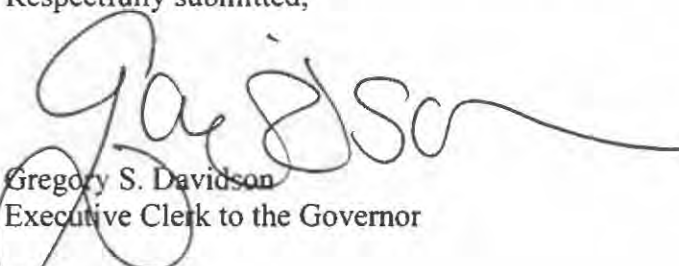
Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to

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and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, under Section 418.173, the legislature authorized as "an offense," punishable by a fine up to \$1,000, any "failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans' private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called "vaccine passports," the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
 - a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; *provided, however, that*:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
 - a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

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or otherwise, under due order of pleadings or similar procedural requisites. The Court has requested that the parties use the instant briefing to provide notice of their respective positions and the leading case law supporting those positions with minimal argument. Defendants have endeavored to comply with these instructions.

II. RELEVANT FACTS

This case arises out of Governor Abbott’s July 29, 2021 Executive Order GA-38 (“GA-38”) prohibiting governmental entities, including school districts, from requiring anyone to wear a mask and TEA’s August 5, 2021 Public Health Guidance (“Public Health Guidance”) publishing the requirements for the operation of public schools in compliance with GA-38.¹ GA-38’s prohibition on mask mandates expressly supersedes contrary requirements issued by local governmental entities or their officials, and those who fail to comply with this executive order are subject to a criminal penalty of up to \$1,000. Dkt. 21.1 ¶4.b. GA-38 also provides that public schools may operate in compliance with the Governor’s executive order and by the guidance issued by TEA. *Id.* ¶3.e. While the Public Health Guidance does set forth the prohibitions and requirements of GA-38, it also recommends “that public school systems consult with their local public health authorities and local legal counsel **before making final decisions regarding the implementation of this guidance.**” Dkt 21.2 at 2.

Plaintiffs in this case attend Texas public schools and assert that they are individuals with disabilities as defined under the Americans with Disabilities Act (“ADA”) and Section 504 the Rehabilitation Act of 1973 (“Section 504”). They allege their disabilities make them particularly susceptible to COVID-19, and that their susceptibility makes attending public school alongside others

¹ The Public Health Guidance attached to Plaintiffs’ Complaint as Exhibit 2 (Dkt. 21.2) has been superseded. The section relating to masks now states: “mask provisions of GA-38 are not being enforced as the result of ongoing litigation. Further guidance will be made available after the court issues are resolved.” The version currently in effect can be found at <https://tea.texas.gov/sites/default/files/covid/SY-20-21-Public-Health-Guidance.pdf>.

who do not wear masks so dangerous as to preclude their in-person attendance. Plaintiffs have brought suit claiming that Defendants Abbott, Morath, and Paxton, in their official capacities, have violated the ADA, Section 504, and that GA-38 and TEA's Public Health Guidance are preempted by the American Rescue Plan Act of 2021. Plaintiffs request the following relief from this Court:

1. A declaration that GA-38 and TEA's Public Health Guidance violate Plaintiffs' rights under the ADA and Section 504, and are pre-empted by the American Rescue Plan Act;
2. A temporary restraining order, as well as preliminary and permanent injunctive relief, enjoining Defendants from violating the ADA, Section 504, and the American Rescue Plan Act by prohibiting local school districts from requiring masks for their students and staff; and
3. Preliminary and permanent injunctive relief enjoining Defendants from violating the ADA, Section 504, and the American Rescue Plan Act by withholding state and federal educational funds from districts that elect to require students and staff to wear masks.

For the reasons set forth below, Defendants assert they are not the proper parties to this lawsuit.

III. AUTHORITY

The issue upon which the Court requested briefing is whether the Governor, the Attorney General, the Commissioner of the Texas Education Agency, and the Texas Education Agency are proper parties to this suit. For the reasons stated below, Defendants are not proper parties and should be dismissed from this case for lack of jurisdiction.

A. The Governor

Governor Abbott is not a proper party. GA-38 is enforceable by criminal prosecution of the \$1,000 fine. Governor Abbott does not enforce GA-38 and therefore the injury is not fairly traceable to him, nor can it be redressed against him. In support of this conclusion, Governor Abbott respectfully directs the Court's attention to the following authorities:

- *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 560-61 (1992) ("the irreducible constitutional minimum of standing contains three elements": injury in fact; causation such that the injury is "fairly ... trace[able] to the challenged action of the defendant"; and redressability by favorable decision)

- *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 400 (5th Cir. 2020) (“Because the plaintiffs have pointed to nothing that outlines a relevant enforcement role for Governor Abbott, the plaintiffs’ injuries likely cannot be fairly traced to him.”)
- *In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020) (holding that the Governor’s disclaim of intent to enforce an executive order based on his acknowledgment that it would be enforced by local district attorneys meant that the plaintiffs had not established the credible threat of prosecution required to establish standing for their pre-enforcement challenge)
- *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) (holding that, in the context of a statutory challenge, to demonstrate standing to sue the governor and attorney general, the plaintiffs needed to demonstrate how those state officials played a causal role in their injury or could redress their actual or threatened injury)
- *In re Abbott*, 956 F.3d 696, 709 (5th Cir. 2020) (holding that the Governor was not a proper defendant in a challenge to an executive order because “the power to promulgate law is not the power to enforce it” and the Governor has authority to “‘issue,’ ‘amend,’ or ‘rescind’ executive orders, not to ‘enforce’ them”), *cert. granted, judgment vacated on other grounds sub nom. Planned Parenthood v. Abbott*, No. 20-305, 2021 WL 231539 (U.S. Jan. 25, 2021)
- *6th Street Business Partners LLC v. Abbott*, No. 1:20-CV-706-RP, 2020 WL 4274589, at *3–4 (W.D. Tex. 2020) (Pitman, J.) (holding that the plaintiffs had not demonstrated Article III standing because their injuries could not be fairly traced to nor redressed by the Governor as the Governor lacked authority to enforce his executive order)
- *Morris v. Livingston*, 739 F.3d 740, 756 (5th Cir. 2014) (holding that the Governor was not a proper defendant in a challenge to a state law because he lacked a particular duty to enforce the statute in question)

B. The Attorney General

The Attorney General is not a proper party. Again, GA-38 is enforceable by criminal prosecution of the \$1,000 fine. The Attorney General does not enforce GA-38 and therefore the injury is not fairly traceable to him, nor can be it be redressed again him. Even if this Court were to issue an injunction against the Attorney General, GA-38 would still be enforceable by local district attorneys—parties who are not before the Court. In support of this conclusion, the Attorney General respectfully directs the Court’s attention to the following authorities:

- *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 560-61 (1992) (“irreducible constitutional minimum of standing contains three elements”: injury in fact; causation such that the injury is “fairly ... trace[able] to the challenged action of the defendant”; and redressability by favorable decision)

- *In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020) (holding that the Attorney General’s disclaim of intent to enforce an executive order based on his acknowledgment that it would be enforced by local district attorneys meant that the plaintiffs had not established the credible threat of prosecution required to establish standing for their pre-enforcement challenge)
- *In re Abbott*, 956 F.3d 696, 709 (5th Cir. 2020) (holding that the Attorney General was not a proper defendant in a challenge to an executive order because his authority to prosecute a violation of an executive order was insufficient to demonstrate the requisite enforcement connection), *cert. granted, judgment vacated on other grounds sub nom. Planned Parenthood v. Abbott*, No. 20-305, 2021 WL 231539 (U.S. Jan. 25, 2021)
- *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42 (1976) (“It is equally speculative whether the desired exercise of the court’s remedial powers in this suit would result in the availability to respondents of such services. So far as the complaint sheds light, it is just as plausible that the hospitals to which respondents may apply for service would elect to forgo favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services.”)
- *Hewitt v. Helms*, 482 U.S. 755, 761 (1987) (“Redress is sought *through* the court, but *from* the defendant. This is no less true of a declaratory judgment suit than of any other action. The real value of the judicial pronouncement—what makes it a proper judicial resolution of a case or controversy rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff*.”) (emphasis in original)
- *Ex parte Young*, 209 U.S. 123, 157 (1908) (rejecting argument that constitutionality of an act could be challenged by suit against attorney general simply because he “might represent the state in litigation involving the enforcement of its statutes”)
- *Bronson v. Swensen*, 500 F.3d 1099, 1110 (10th Cir. 2007) (“It is well-established that when a plaintiff brings a pre-enforcement challenge to the constitutionality of a particular statutory provision, the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision.”)
- *Sullo & Bobbitt, PLLC v. Abbott*, 2012 WL 2796794, at *5 (N.D. Tex. 2012) (Fitzwater, C.J.) (“[T]he real value of the judicial pronouncement—what makes it a proper judicial resolution of a case or controversy rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff* and not of a third party.”) (emphasis in original), *aff’d*, 2013 WL 3783751 (5th Cir. 2013)
- *Inclusive Cmty’s Project, Inc. v. Dep’t of Treasury*, 946 F.3d 649, 655 (5th Cir. 2019) (holding that when a plaintiff is not the direct object of government action, it is difficult to establish standing)

C. The Commissioner of the Texas Education Agency

Commissioner Morath is not a proper party. By its own terms, the Public Health Guidance is neither mandatory nor binding. Commissioner Morath does not “enforce” the Public Health

Guidance and has made no effort to do so, and therefore Plaintiffs’ alleged injury is not fairly traceable to him, nor can it be redressed by him. Commissioner Morath did not issue GA-38, which contemplates no enforcement role for Commissioner Morath, and has neither threatened nor sought to enforce the order.

- *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 560-61 (1992) (“irreducible constitutional minimum of standing contains three elements”: injury in fact; causation such that the injury is “fairly ... trace[able] to the challenged action of the defendant”; and redressability by favorable decision)
- *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) (holding that plaintiffs did not have standing to bring statutory challenge against government officials who did not have “any duty or ability to do *anything*” relating to enforcement of the statute)
- *Ex parte Young*, 209 U.S. 123, 157 (1908) (rejecting argument that constitutionality of an act could be challenged by suit against attorney general simply because he “might represent the state in litigation involving the enforcement of its statutes”)
- *K.P. v. LaBlanc*, 627 F.3d 115, 124 (5th Cir. 2010) (holding that “[e]nforcement typically involves compulsion or constraint”)
- *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019) (showing the requisite “connection to the enforcement” of the challenged provision requires “some scintilla of enforcement by the relevant state official with respect to the challenged law”)
- *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42 (1976) (“It is equally speculative whether the desired exercise of the court’s remedial powers in this suit would result in the availability to respondents of such services. So far as the complaint sheds light, it is just as plausible that the hospitals to which respondents may apply for service would elect to forgo favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services.”)

D. The Texas Education Agency

The TEA is not a proper party for substantially the same reasons as Commissioner Morath. The Public Health Guidance is not mandatory, and the TEA has not sought to enforce it. Plaintiffs’ alleged injury is therefore not fairly traceable to the TEA, nor could such injury be redressed by it. As with Commissioner Morath, the TEA did not issue GA-38. GA-38 contemplates no enforcement role for TEA. TEA claims no such role, and has not sought to enforce GA-38 in any way.

- *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 560-61 (1992) (“irreducible constitutional minimum of

standing contains three elements”: injury in fact; causation such that the injury is “fairly ... trace[able] to the challenged action of the defendant”; and redressability by favorable decision)

- *Okpalobi v. Foster*, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) (holding that plaintiffs did not have standing to bring statutory challenge against government officials who did not have “any duty or ability to do *anything*” relating to enforcement of the statute)
- *Ex parte Young*, 209 U.S. 123, 157 (1908) (rejecting argument that constitutionality of an act could be challenged by suit against attorney general simply because he “might represent the state in litigation involving the enforcement of its statutes”)
- *Sullo & Bobbitt, PLLC v. Abbott*, 2012 WL 2796794, at *5 (N.D. Tex. 2012) (Fitzwater, C.J.) (“[I]he real value of the judicial pronouncement—what makes it a proper judicial resolution of a case or controversy rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff* and not of a third party.”) (emphasis in original), *aff’d*, 2013 WL 3783751 (5th Cir. 2013)
- *K.P. v. LaBlanc*, 627 F.3d 115, 124 (5th Cir. 2010) (holding that “[e]nforcement typically involves compulsion or constraint.”)
- *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019) (showing the requisite “connection to the enforcement” of the challenged provision requires “some scintilla of enforcement by the relevant state official with respect to the challenged law.”)
- *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42 (1976) (“It is equally speculative whether the desired exercise of the court’s remedial powers in this suit would result in the availability to respondents of such services. So far as the complaint sheds light, it is just as plausible that the hospitals to which respondents may apply for service would elect to forgo favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services.”)

IV. CONCLUSION

For the reasons stated above, Defendants believe they are not proper parties. Should this Court disagree, Defendants look forward to briefing the issues more fully in the context of a full motion to dismiss that also includes arguments regarding Plaintiff’s failure to state a claim more generally, apart from the named parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 3, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record.

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COVID-19

UPDATE

Given new evidence on the B.1.617.2 (Delta) variant, CDC has updated the guidance for fully vaccinated people. CDC recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status. Children should return to full-time in-person learning in the fall with layered prevention strategies in place.

Guidance for COVID-19 Prevention in K-12 Schools

Updated Aug. 5, 2021

[Print](#)

Key Takeaways

- Students benefit from in-person learning, and safely returning to in-person instruction in the fall 2021 is a priority.
- Vaccination is the leading public health prevention strategy to end the COVID-19 pandemic. Promoting vaccination can help schools safely return to in-person learning as well as extracurricular activities and sports.
- Due to the circulating and highly contagious Delta variant, CDC recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.
- In addition to universal indoor masking, CDC recommends schools maintain at least 3 feet of physical distance between students within classrooms to reduce transmission risk. When it is not possible to maintain a physical distance of at least 3 feet, such as when schools cannot fully re-open while maintaining these distances, it is especially important to layer multiple other prevention strategies, such as screening testing.
- Screening testing, ventilation, handwashing and respiratory etiquette, staying home when sick and getting tested, contact tracing in combination with quarantine and isolation, and cleaning and disinfection are also important layers of prevention to keep schools safe.
- Students, teachers, and staff should stay home when they have signs of any infectious illness and be referred to their healthcare provider for testing and care.
- Many schools serve children under the age of 12 who are not eligible for vaccination at this time. Therefore, this guidance emphasizes implementing layered prevention strategies (e.g., using multiple prevention strategies together consistently) to protect students, teachers, staff, visitors, and other members of their households and support in-person learning.
- Localities should monitor community transmission, vaccination coverage, screening testing, and occurrence of outbreaks to guide decisions on the level of layered prevention strategies (e.g., physical distancing, screening testing).

Summary of Recent Changes

Updates as of August 4, 2021



- Updated to recommend universal indoor masking for all students, staff, teachers, and visitors to K-12 schools, regardless of vaccination status.

- Added recommendation for fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 to be tested 3-5 days after exposure, regardless of whether they have symptoms.

Updates as of July 9, 2021



- Added information on offering and promoting COVID-19 vaccination.
 - Updated to emphasize the need for localities to monitor community transmission, vaccination coverage, screening testing, and occurrence of outbreaks to guide decisions on the level of layered prevention strategies.
 - Revised to emphasize the COVID-19 prevention strategies most important for in-person learning for K-12 schools.
 - Added language on the importance of offering in-person learning, regardless of whether all of the prevention strategies can be implemented at the school.
 - For example, because of the importance of in-person learning, schools where not everyone is fully vaccinated should implement physical distancing to the extent possible within their structures (in addition to masking and other prevention strategies), but should not exclude students from in-person learning to keep a minimum distance requirement.
 - Updated to align with guidance for fully vaccinated people.
 - Updated to align with current mask guidance.
 - In general, people do not need to wear masks when outdoors.
 - Added language on safety and health protections for workers in K-12 schools.
-

This updated version of COVID-19 guidance for school administrators outlines strategies for K-12 schools to reduce the spread of COVID-19 and maintain safe operations.

Many schools serve children under the age of 12 who are not eligible for vaccination at this time. Therefore, this guidance emphasizes implementing layered prevention strategies (e.g., using multiple prevention strategies together) to protect students, teachers, staff, and other members of their households, and to support in-person learning. This guidance is based on current scientific evidence and lessons learned from schools implementing COVID-19 prevention strategies.

This CDC guidance is meant to supplement—not replace—any federal, state, local, territorial, or tribal health and safety laws, rules, and regulations with which schools must comply. The adoption and implementation of this guidance should be done in collaboration with regulatory agencies and state, local, territorial, and tribal public health departments, and in compliance with state and local policies and practices.

COVID-19 Prevention Strategies Most Important for Safe In-Person Learning in K-12 Schools

To get kids back in-person safely, schools should monitor



**Community
Transmission**



**Vaccination
Coverage**



Testing



Outbreaks

to help prevent the spread of COVID-19



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

CS325431A 07/06/2021

Schools are an important part of the infrastructure of communities. They provide safe and supportive learning environments for students that support social and emotional development, provide access to critical services, and improve life outcomes. They also employ people, and enable parents, guardians, and caregivers to work. Though COVID-19 outbreaks have occurred in school settings, multiple studies have shown that transmission rates within school settings, when multiple prevention strategies are in place, are typically lower than – or similar to – community transmission levels. CDC’s science brief on *Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs* summarizes evidence on COVID-19 among children and adolescents and what is known about preventing transmission in schools and Early Care and Education programs.

However, with COVID-19 cases increasing nationally since mid-June 2021, driven by the B.1.617.2 (Delta) variant of SARS-CoV-2, protection against exposure remains essential in school settings. Because of the highly transmissible nature of this variant, along with the extent of mixing of vaccinated and unvaccinated people in schools, the fact that children <12 years of age are not currently eligible for vaccination, and low levels of vaccination among youth ages 12-17, CDC recommends universal indoor masking for all students (age 2 years and older), teachers, staff, and visitors to K-12 schools regardless of vaccination status.

Schools should work with local public health officials, consistent with applicable laws and regulations, including those related to privacy, to determine the additional prevention strategies needed in their area by monitoring levels of community transmission (i.e., low, moderate, substantial, or high) and local vaccine coverage, and use of screening testing to detect cases in K-12 schools. For example, with a low teacher, staff, or student vaccination rate, and without a screening testing program, schools might decide that they need to continue to maximize physical distancing or implement screening testing in addition to mask wearing.

Schools should communicate their strategies and any changes in plans to teachers, staff, and families, and directly to older students, using accessible materials and communication channels, in a language and at a literacy level that teachers, staff, students, and families understand.

Health Equity

Schools play critical roles in promoting equity in learning and health, particularly for groups disproportionately affected by COVID-19. People living in rural areas, people with disabilities, immigrants, and people who identify as American Indian/Alaska Native, Black or African American, and Hispanic or Latino have been disproportionately affected by COVID-19; these disparities have also emerged among children. For these reasons, health equity considerations related to the K-12 setting are a critical part of decision-making and have been considered in CDC’s updated guidance for schools. School administrators and public health officials can ensure safe and supportive environments and reassure families, teachers, and staff by planning and using comprehensive prevention strategies for in-person learning and communicating those efforts. Schools can work with parents to understand their preferences and concerns for in-person learning.

School administrators can promote health equity by ensuring all students, teachers, and staff have resources to support physical and mental health. School administrators can offer modified job responsibilities for staff at higher risk for severe illness who have not been fully vaccinated while protecting individual privacy. Federal and state disability laws may require an individualized approach for working with children and youth with disabilities consistent with the child’s Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), or Section 504 plan. Administrators should consider adaptations and alternatives to prevention strategies when serving people with disabilities, while maintaining efforts to protect all children and staff from COVID-19.

Section 1: Prevention Strategies to Reduce Transmission of SARS-CoV-2 in Schools

CDC recommends that all teachers, staff and eligible students be vaccinated as soon as possible. However, schools have a mixed population of both people who are fully vaccinated and people who are not fully vaccinated. Elementary schools primarily serve children under 12 years of age who are not eligible for the COVID-19 vaccine at this time. Other schools (e.g., middle schools, K-8 schools) may also have students who are not yet eligible for COVID-19 vaccination. Some schools (e.g., high schools) may have a low percentage of students and staff fully vaccinated despite vaccine eligibility. These variations

require K-12 administrators to make decisions about the use of COVID-19 prevention strategies in their schools and are reasons why CDC recommends universal indoor masking regardless of vaccination status at all levels of community transmission.

Together with local public health officials, school administrators should consider multiple factors when they make decisions about implementing layered prevention strategies against COVID-19. Since schools typically serve their surrounding communities, decisions should be based on the school population, families and students served, as well as their communities. The primary factors to consider include:

- Level of community transmission of COVID-19.
- COVID-19 vaccination coverage in the community and among students, teachers, and staff.
- Strain on health system capacity for the community.
- Use of a frequent SARS-CoV-2 screening testing program for students, teachers, and staff who are not fully vaccinated. Testing provides an important layer of prevention, particularly in areas with substantial to high community transmission levels.
- COVID-19 outbreaks or increasing trends in the school or surrounding community.
- Ages of children served by K-12 schools and the associated social and behavioral factors that may affect risk of transmission and the feasibility of different prevention strategies.

Prevention Strategies

- Promoting vaccination
- Consistent and correct mask use
- Physical distancing
- Screening testing to promptly identify cases, clusters, and outbreaks
- Ventilation
- Handwashing and respiratory etiquette
- Staying home when sick and getting tested
- Contact tracing, in combination with isolation and quarantine
- Cleaning and disinfection

CDC recommends universal indoor masking, physical distancing to the extent possible, and additional prevention strategies to protect students, teachers, and staff. Schools should not exclude students from in-person learning to keep a minimum distance requirement; layering multiple prevention strategies is essential when physical distancing of at least 3 feet is not possible at all times.

1. Promoting Vaccination

COVID-19 vaccination among all eligible students as well as teachers, staff, and household members is the most critical strategy to help schools safely resume full operations.

Vaccination is the leading public health prevention strategy to end the COVID-19 pandemic. People who are fully vaccinated against COVID-19 are at low risk of symptomatic or severe infection. A growing body of evidence suggests that people who are fully vaccinated against COVID-19 are less likely to become infected and develop symptoms and are at substantially reduced risk from severe illness and death from COVID-19 compared with unvaccinated people.

Only a small proportion of fully vaccinated people get infected (breakthrough infections), even with the Delta variant. Moreover, when these infections occur among vaccinated people, they tend to be milder than among those who are unvaccinated. However, preliminary evidence suggests that fully vaccinated people who are infected with the Delta variant can be infectious and can spread the virus to others. To reduce the risk of becoming infected with the Delta variant and spreading it to others, students, teachers, and school staff should continue to use layered prevention strategies including universal masking in schools.

People 12 years and older are now eligible for COVID-19 vaccination. Schools can promote vaccinations among teachers, staff, families, and eligible students by providing information about COVID-19 vaccination, encouraging vaccine trust and confidence, and establishing supportive policies and practices that make getting vaccinated as easy and convenient as possible.

When promoting COVID-19 vaccination, consider that certain communities and groups have been disproportionately affected by COVID-19 illness and severe outcomes, and some communities might have experiences that affect their trust and confidence in the healthcare system. Teachers, staff, students, and their families may differ in their level of vaccine confidence. School administrators can adjust their messages to the needs of their families and community and involve trusted community messengers as appropriate, including those on social media, to promote COVID-19 vaccination among people who may be hesitant to receive it.

To promote vaccination, schools can:

- Visit [vaccines.gov](https://www.vaccines.gov) to find out where teachers, staff, students, and their families can get vaccinated against COVID-19 in the community and promote COVID-19 vaccination locations near schools.
- Encourage teachers, staff, and families, including extended family members that have frequent contact with students, to get vaccinated as soon as they can.
- Consider partnering with state or local public health authorities to serve as COVID-19 vaccination sites, and work with local healthcare providers and organizations, including school-based health centers. Offering vaccines on-site before, during, and after the school day and during summer months can potentially decrease barriers to getting vaccinated against COVID-19. Identify other potential barriers that may be unique to the workforce and implement policies and practices to address them. The Workplace Vaccination Program has information for employers on recommended policies and practices for encouraging COVID-19 vaccination uptake among workers.
- Find ways to adapt key messages to help families, teachers, and staff become more confident about the vaccine by using the language, tone, and format that fits the needs of the community and is responsive to concerns.
- Use CDC COVID-19 Vaccination Toolkits to educate members of the school community and promote COVID-19 vaccination. CDC's Workers COVID-19 Vaccine Toolkit is also available to help employers educate their workers about COVID-19 vaccines, raise awareness about vaccination benefits, and address common questions and concerns. HHS also has an On-site Vaccination Clinic Toolkit [\[link\]](#) to help community groups, employers, and other host organizations work directly with vaccine providers to set up vaccination clinics in locations that people know and trust.
- Host information sessions to connect parents and guardians with information about the COVID-19 vaccine. Teachers, staff, and health professionals can be trusted sources to explain the safety, efficacy, and benefits of COVID-19 vaccines and answer frequently asked questions.
- Offer flexible, supportive sick leave options (e.g., paid sick leave) for employees to get vaccinated or who have side effects after vaccination. See CDC's Post-vaccination Considerations for Workplaces.
- Promote vaccination information for parents and guardians, siblings who are eligible for vaccines, and other household members as part of kindergarten transition and enrollment in summer activities for families entering the school system.
- Provide students and families flexible options for excused absence to receive a COVID-19 vaccination and for possible side effects after vaccination.
- Work with local partners to offer COVID-19 vaccination for eligible students and eligible family members during pre-sport/extracurricular activity summer physicals.

2. Consistent and Correct Mask Use

When teachers, staff, and students consistently and correctly wear a mask, they protect others as well as themselves. Consistent and correct mask use is especially important indoors and in crowded settings, when physical distancing cannot be maintained.

- **Indoors:** CDC recommends indoor masking for all individuals age 2 years and older, including students, teachers, staff, and visitors, regardless of vaccination status.
- **Outdoors:** In general, people do not need to wear masks when outdoors. CDC recommends that people who are not fully vaccinated wear a mask in crowded outdoor settings or during activities that involve sustained close contact with other people. Fully vaccinated people might choose to wear a mask in crowded outdoor settings if they or someone in their household is immunocompromised.

Exceptions can be made for the following categories of people:

- A person who cannot wear a mask, or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et seq.). Discuss the possibility of reasonable accommodation [↗](#) with workers who are unable to wear or have difficulty wearing certain types of masks because of a disability.
- A person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

Masks should meet one of the following criteria:

- CDC mask recommendations
- NIOSH Workplace Performance and Workplace Performance Plus masks

During school transportation: CDC's Order applies to all public transportation conveyances including school buses. Passengers and drivers must wear a mask on school buses, including on buses operated by public and private school systems, regardless of vaccination status, subject to the exclusions and exemptions in CDC's Order. [Learn more here.](#)

Schools should provide masks to those students who need them (including on buses), such as students who forgot to bring their mask or whose families are unable to afford them. No disciplinary action should be taken against a student who does not have a mask as described in the U.S. Department of Education COVID-19 Handbook, Volume 1 [↗](#).

3. Physical Distancing

Because of the importance of in-person learning, schools should implement physical distancing to the extent possible within their structures but should not exclude students from in-person learning to keep a minimum distance requirement. In general, CDC recommends people who are not fully vaccinated maintain physical distance of at least 6 feet from other people who are not in their household. However, several studies from the 2020-2021 school year show low COVID-19 transmission levels among students in schools that had less than 6 feet of physical distance when the school implemented and layered other prevention strategies, such as the use of masks.

Based on studies from 2020-2021 school year, CDC recommends schools maintain at least 3 feet of physical distance between students within classrooms, combined with indoor mask wearing to reduce transmission risk. When it is not possible to maintain a physical distance of at least 3 feet, such as when schools cannot fully re-open while maintaining these distances, it is especially important to layer multiple other prevention strategies, such as screening testing, cohorting, improved ventilation, handwashing and covering coughs and sneezes, staying home when sick with symptoms of infectious illness including COVID-19, and regular cleaning to help reduce transmission risk. A distance of at least 6 feet is recommended between students and teachers/staff, and between teachers/staff who are not fully vaccinated. Mask use by all students, teachers, staff, and visitors is particularly important when physical distance cannot be maintained.

Cohorting: Cohorting means keeping people together in a small group and having each group stay together throughout an entire day. Cohorting can be used to limit the number of students, teachers, and staff who come in contact with each other, especially when it is challenging to maintain physical distancing, such as among young children, and particularly in areas of moderate-to-high transmission levels. The use of cohorting can limit the spread of COVID-19 between cohorts but should not replace other prevention measures within each group. Cohorting people who are fully vaccinated and people who are not fully vaccinated into separate cohorts is not recommended. It is a school's responsibility to ensure that cohorting is done in an equitable manner that does not perpetuate academic, racial, or other tracking, as described in the U.S. Department of Education COVID-19 Handbook, Volume 1 [↗](#).

4. Screening Testing

Screening testing identifies infected people, including those with or without symptoms (or before development of symptoms) who may be contagious, so that measures can be taken to prevent further transmission. In K-12 schools, screening testing can help promptly identify and isolate cases, quarantine those who may have been exposed to COVID-19 and are not fully vaccinated, and identify clusters to reduce the risk to in-person education. CDC guidance provides that people who are fully vaccinated do not need to participate in screening testing and do not need to quarantine if they do not have any symptoms. Decisions regarding screening testing may be made at the state or local level. Screening testing may be most valuable in areas with substantial or high community transmission levels, in areas with low vaccination coverage, and in schools where other prevention strategies are not implemented. More frequent testing can increase effectiveness, but feasibility of increased

testing in schools needs to be considered. Screening testing should be done in a way that ensures the ability to maintain confidentiality of results and protect student, teacher, and staff privacy. Consistent with state legal requirements and Family Educational Rights and Privacy Act (FERPA) [\[7\]](#), K-12 schools should obtain parental consent for minor students and assent/consent for students themselves.

Screening testing can be used to help evaluate and adjust prevention strategies and provide added protection for schools that are not able to provide optimal physical distance between students. Screening testing should be offered to students who have not been fully vaccinated when community transmission is at moderate, substantial, or high levels (Table 1); at any level of community transmission, screening testing should be offered to all teachers and staff who have not been fully vaccinated. To be effective, the screening program should test at least once per week, and rapidly (within 24 hours) report results. Screening testing more than once a week might be more effective at interrupting transmission. Schools may consider multiple screening testing strategies, for example, testing a random sample of at least 10% of students who are not fully vaccinated, or conducting pooled testing of cohorts. Testing in low-prevalence settings might produce false positive results, but testing can provide an important prevention strategy and safety net to support in-person education.

To facilitate safe participation in sports, extracurricular activities, and other activities with elevated risk (such as activities that involve singing, shouting, band, and exercise that could lead to increased exhalation), schools should consider implementing screening testing for participants who are not fully vaccinated. Schools can routinely test student athletes, participants, coaches, and trainers, and other people (such as adult volunteers) who are not fully vaccinated and could come into close contact with others during these activities. Schools should consider implementing screening testing of participants who are not fully vaccinated up to 24 hours before sporting, competition, or extracurricular events. Schools can use different screening testing strategies for lower-risk sports. High-risk sports and extracurricular activities should be virtual or canceled in areas of high community transmission unless all participants are fully vaccinated.

Funding provided through the ELC Reopening Schools award is primarily focused on providing needed resources to implement screening testing programs in schools aligned with the CDC recommendations. Learn more [ELC Reopening Schools: Support for Screening Testing to Reopen & Keep Schools Operating Safely Guidance](#) [\[8\]](#). Resources are available to support school testing – see Appendix 2: Testing Strategies for COVID-19 Prevention in K-12 Schools.

Table 1. Screening Testing Recommendations for K–12 Schools by Level of Community Transmission

	Low Transmission ¹ Blue	Moderate Transmission Yellow	Substantial Transmission Orange	High Transmission Red
Students	Do not need to screen students.	Offer screening testing for students who are not fully vaccinated at least once per week.		
Teachers and staff	Offer screening testing for teachers and staff who are not fully vaccinated at least once per week.			
High risk sports and activities	Recommend screening testing for high-risk sports ² and extracurricular activities ³ at least once per week for participants who are not fully vaccinated.		Recommend screening testing for high-risk sports and extracurricular activities twice per week for participants who are not fully vaccinated.	Cancel or hold high-risk sports and extracurricular activities virtually to protect in-person learning, unless all participants are fully vaccinated.
Low- and intermediate-risk sports	Do not need to screen students participating in low- and intermediate-risk sports. ²	Recommend screening testing for low- and intermediate-risk sports at least once per week for participants who are not fully vaccinated.		

¹ Levels of community transmission defined as total new cases per 100,000 persons in the past 7 days (low, 0-9; moderate 10-49; substantial, 50-99, high, ≥ 100) and percentage of positive tests in the past 7 days (low, $<5\%$; moderate, 5-7.9%; substantial, 8-9.9%; high, $\geq 10\%$.)

² Examples of low-risk sports are diving and golf; intermediate-risk sport examples are baseball and cross country; high-risk sport examples are football and wrestling.

³ High-risk extracurricular activities are those in which increased exhalation occurs, such as activities that involve singing, shouting, band, or exercise, especially when conducted indoors.



5. Ventilation



Improving ventilation is an important COVID-19 prevention strategy that can reduce the number of virus particles in the air. Along with other preventive strategies, including wearing a well-fitting, multi-layered mask, bringing fresh outdoor air into a building helps keep virus particles from concentrating inside. This can be done by opening multiple doors and windows, using child-safe fans to increase the effectiveness of open windows, and making changes to the HVAC or air filtration systems.

During transportation, open or crack windows in buses and other forms of transportation, if doing so does not pose a safety risk. Keeping windows open a few inches improves air circulation.

For more specific information about maintenance, use of ventilation equipment, actions to improve ventilation, and other ventilation considerations, refer to:

- CDC's Ventilation in Schools and Child care Programs
- CDC's Ventilation in Buildings webpage
- CDC's Ventilation FAQs and
- CDC's Improving Ventilation in Your Home

Additional ventilation recommendations for different types of school buildings can be found in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) schools and universities guidance document  .

Funds provided through the Elementary and Secondary Schools Emergency Relief Programs and the Governor's Emergency Education Relief Programs can support improvements to ventilation. Please see question B-7 of the U.S. Department of Education Uses of Funds   guidance for these programs.

6. Handwashing and Respiratory Etiquette

People should practice handwashing and respiratory etiquette (covering coughs and sneezes) to keep from getting and spreading infectious illnesses including COVID-19. Schools can monitor and reinforce these behaviors and provide adequate handwashing supplies.

- Teach and reinforce handwashing with soap and water for at least 20 seconds.
- Remind everyone in the facility to wash hands frequently and assist young children with handwashing.
- If handwashing is not possible, use hand sanitizer containing at least 60% alcohol (for teachers, staff, and older students who can safely use hand sanitizer). Hand sanitizers should be stored up, away, and out of sight of young children and should be used only with adult supervision for children under 6 years of age.

7. Staying Home When Sick and Getting Tested

Students, teachers, and staff who have symptoms of infectious illness, such as influenza (flu) or COVID-19, should stay home and be referred to their healthcare provider for testing and care, regardless of vaccination status. Staying home when sick with COVID-19 is essential to keep COVID-19 infections out of schools and prevent spread to others. Schools should also allow flexible, non-punitive, and supportive paid sick leave policies and practices that encourage sick workers to stay home without fear of retaliation, loss of pay, or loss of employment level and provide excused absences for students who are sick. Employers should ensure that workers are aware of and understand these policies. If a student becomes sick at school, see

What to do if a Student Becomes Sick or Reports a New COVID-19 Diagnosis at School. If a school does not have a routine screening testing program, the ability to do rapid testing on site could facilitate COVID-19 diagnosis and inform the need for quarantine of close contacts and isolation.

Schools should educate teachers, staff, and families about when they and their children should stay home and when they can return to school. During the COVID-19 pandemic, it is essential that parents keep children home if they are showing signs and symptoms of COVID-19 and get them tested.

Getting tested for COVID-19 when symptoms are compatible with COVID-19 will help with rapid contact tracing and prevent possible spread at schools, especially if key prevention strategies (masking and distancing) are not in use. Some localities might choose to use testing to shorten quarantine periods.

8. Contact Tracing in Combination with Isolation and Quarantine

Schools should continue to collaborate with state and local health departments, to the extent allowable by privacy laws and other applicable laws, to confidentially provide information about people diagnosed with or exposed to COVID-19. This allows identifying which students, teachers, and staff with positive COVID-19 test results should isolate, and which close contacts should quarantine.

- Fully vaccinated close contacts should be referred for COVID-19 testing. If asymptomatic, fully vaccinated close contacts do not need to quarantine at home following an exposure (they can continue to attend school in-person and participate in other activities). In addition to correctly wearing masks in school, they should wear a mask in other indoor public settings for 14 days or until they receive a negative test result.
- Close contacts who are not fully vaccinated should be referred for COVID-19 testing. Regardless of test result, they should quarantine at home for 14 days after exposure. Options to shorten quarantine provide acceptable alternatives of a 10-day quarantine or a 7-day quarantine combined with testing and a negative test result.

See the added exception in the close contact definition for the exclusion of students in the K-12 indoor classroom who are within 3 to 6 feet of an infected student with masking. See the Department of Education's Protecting Student Privacy FERPA and the Coronavirus Disease 2019 [FAQ](#) for more information.

Schools should report, to the extent allowable by applicable privacy laws, new diagnoses of COVID-19 to their state or local health department as soon as they are informed. School officials should notify, to the extent allowable by applicable privacy laws, teachers, staff, and families of students who were close contacts as soon as possible (within the same day if possible) after they are notified that someone in the school has tested positive.

9. Cleaning and Disinfection

In general, cleaning once a day is usually enough to sufficiently remove potential virus that may be on surfaces. Disinfecting (using disinfectants on the U.S. Environmental Protection Agency COVID-19 list [FAQ](#)) removes any remaining germs on surfaces, which further reduces any risk of spreading infection.

For more information on cleaning a facility regularly, when to clean more frequently or disinfect, cleaning a facility when someone is sick, safe storage of cleaning and disinfecting products, and considerations for protecting workers who clean facilities, see [Cleaning and Disinfecting Your Facility](#).

If a facility has had a sick person or someone who tested positive for COVID-19 within the last 24 hours, clean AND disinfect the space.

Section 2: Additional Considerations for K-12 Schools

Disabilities or Other Health Care Needs

Provide accommodations, modifications, and assistance for students, teachers, and staff with disabilities and other health care needs when implementing COVID-19 safety protocols:

- Work with families to better understand the individual needs of students with disabilities.

- Remain accessible for students with disabilities:
 - Help provide access for direct service providers (DSP) (e.g., paraprofessionals, therapists, early intervention specialists, mental health and healthcare consultants, and others). If DSPs who are not fully vaccinated provide services at more than one location, ask whether any of their other service locations have had COVID-19 cases.
 - Ensure access to services for students with disabilities when developing cohorts.
- Adjust strategies as needed
 - Be aware that physical distancing and wearing masks can be difficult for young children and people with certain disabilities (for example, visual or hearing impairments) or for those with sensory or cognitive issues.
 - For people who are only able to wear masks some of the time for the reasons above, prioritize having them wear masks during times when it is difficult to separate students and/or teachers and staff (e.g., while standing in line or during drop off and pick up).
 - Consider having teachers and staff wear a clear or cloth mask with a clear panel when interacting with young students, students learning to read, or when interacting with people who rely on reading lips.
 - Use behavioral techniques (such as modeling and reinforcing desired behaviors and using picture schedules, timers, visual cues, and positive reinforcement) to help all students adjust to transitions or changes in routines.


Please see [Guidance for Direct Service Providers](#) for resources for DSPs serving children with disabilities or other health care needs during COVID-19.

Visitors

Schools should review their rules for visitors and family engagement activities.

- Schools should limit nonessential visitors, volunteers, and activities involving external groups or organizations, particularly in areas where there is moderate-to-high COVID-19 community transmission.
- Schools should not limit access for direct service providers, but can ensure compliance with school visitor policies.
- Schools should continue to emphasize the importance of staying home when sick. Anyone, including visitors, who have symptoms of infectious illness, such as flu or COVID-19, should stay home and seek testing and care, regardless of vaccination status.

Food Service and School Meals

- Staff should wear masks at all times during meal preparation and service, and during breaks except when eating or drinking.
- Students should wear masks when moving through the food service line.
- Maximize physical distance as much as possible when moving through the food service line and while eating (especially indoors). Using additional spaces outside of the cafeteria for mealtime seating such as the gymnasium or outdoor seating can help facilitate distancing. Students should not be excluded from in-person learning to keep a minimum distance requirement, including during mealtimes.
- Given very low risk of transmission from surfaces and shared objects, there is no need to limit food service approaches to single use items and packaged meals.
- Clean frequently touched surfaces. Surfaces that come in contact with food should be washed, rinsed, and sanitized before and after meals.
- Promote hand washing before, after, and during shifts, before and after eating, after using the toilet, and after handling garbage, dirty dishes, or removing gloves.
- Improve ventilation in food preparation, service, and seating areas.
- U.S. Department of Agriculture has issued several Child Nutrition COVID-19 Waivers. [Learn more here](#) .

Recess and Physical Education

In general, people do not need to wear masks when outdoors (e.g., participating in outdoor play, recess, and physical education activities). CDC recommends people who are not fully vaccinated wear a mask in crowded outdoor settings or during activities that involve sustained close contact with other people. Fully vaccinated people might choose to wear a mask

in crowded outdoor settings if they or someone in their household is immunocompromised. Universal masking is recommended during indoor physical education or recess.

Sports and Other Extracurricular Activities

School-sponsored sports and extracurricular activities provide students with enrichment opportunities that can help them learn and achieve, and support their social, emotional, and mental health. Due to increased exhalation that occurs during physical activity, some sports can put players, coaches, trainers, and others at increased risk for getting and spreading COVID-19. Close contact sports and indoor sports are particularly risky. Similar risks might exist for other extracurricular activities, such as band, choir, theater, and school clubs that meet indoors.

Prevention strategies in these activities remain important and should comply with school day policies and procedures. People who are fully vaccinated can refrain from quarantine following a known exposure if asymptomatic, facilitating continued participation in in-person learning, sports, and extracurricular activities. Students should refrain from these activities when they have symptoms consistent with COVID-19 and should be tested. Schools are strongly encouraged to use screening testing (Table 1) for student athletes and adults (e.g., coaches, teachers, advisors) who are not fully vaccinated who participate in and support these activities to facilitate safe participation and reduce risk of transmission – and avoid jeopardizing in-person education due to outbreaks.

Coaches and school sports administrators should also consider specific sport-related risks:

- **Setting of the sporting event or activity.** In general, the risk of COVID-19 transmission is lower when playing outdoors than in indoor settings. Consider the ability to keep physical distancing in various settings at the sporting event (i.e., fields, benches/team areas, locker rooms, spectator viewing areas, spectator facilities/restrooms, etc.).
- **Physical closeness.** Spread of COVID-19 is more likely to occur in sports that require sustained close contact (such as wrestling, hockey, football).
- **Number of people.** Risk of spread of COVID-19 increases with increasing numbers of athletes, spectators, teachers, and staff.
- **Level of intensity of activity.** The risk of COVID-19 spread increases with the intensity of the sport.
- **Duration of time.** The risk of COVID-19 spread increases the more time athletes, coaches, teachers, staff and spectators spend in close proximity or in indoor group settings. This includes time spent traveling to/from sporting events, meetings, meals, and other settings related to the event.
- **Presence of people more likely to develop severe illness.** People at increased risk of severe illness might need to take extra precautions.

Section 3: School Workers

Workers at increased risk for severe illness from COVID-19 include older adults and people of any age with certain underlying medical conditions if they are not fully vaccinated. Workers who have an underlying medical condition or are taking medication that weakens their immune system may NOT be fully protected even if fully vaccinated and may need to continue using additional prevention measures. Policies and procedures addressing issues related to workers at higher risk of serious illness should be made in consultation with occupational medicine and human resource professionals, keeping in mind Equal Employment Opportunity concerns and guidance [\[1\]](#). Employers should also understand the potential mental health strains for workers during the COVID-19 pandemic. CDC recommends that school administrators should educate workers on mental health awareness and share available mental health and counseling services. Employers should provide a supportive work environment for workers coping with job stress and building resilience, and managing workplace fatigue.

As part of each school's response plan, administrators should conduct workplace hazard assessments [\[2\]](#) periodically to identify COVID-19 transmission risks and prevention strategies, when worksite conditions change, or when there are instances of COVID-19 transmission within the workplace. Strategies to prevent and reduce transmission are based on an approach that prioritizes the most effective practices, known as the hierarchy of controls. School employers should engage and train all workers on potential workplace hazards, what precautions should be taken to protect workers, and workplace policies for reporting concerns. Schools should ensure communication and training for all workers are frequent and easy to understand. Additionally, schools should ensure communication and training are in a language, format, and at a literacy level that workers understand.

Workers in K-12 have the right to a safe and healthful workplace. The Occupational Safety and Health Administration (OSHA) has issued [Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#). This guidance contains recommendations to help employers provide a safe and healthy workplace free from recognized hazards that are causing, or are likely to cause, death or serious physical harm. It also contains descriptions of mandatory safety and health standards. If a worker believes working conditions are unsafe or unhealthful, they or a representative may file a confidential safety and health complaint with OSHA at any time. In states where public sector employers and workers are not covered by OSHA-approved State Plans, there may be agencies that provide public worker occupational safety and health protections and enforce such workers' rights to safe workplaces. Workers should contact state, county, and/or municipal government entities to learn more.

Appendix 1: Planning and Preparing

Emergency Operations Plans

Each school district and school should have an Emergency Operations Plan (EOP) in place to protect students, teachers, staff, and families from the spread of COVID-19 and other emergencies. The EOP should:

- Describe COVID-19 prevention strategies to be implemented.
- Describe steps to take when a student, teacher, or staff member has been exposed to someone with COVID-19, has symptoms of COVID-19, or tests positive for COVID-19.
- Document policy or protocol differences for people who are fully vaccinated for COVID-19 versus those who are not fully vaccinated.
- Be developed in collaboration with regulatory agencies and state, local, territorial, and tribal public health departments, and comply with state and local licensing regulations.
- Be developed with involvement of teachers, staff, parents and guardians, and other community partners (for example, health centers).

Utilize the Whole School, Whole Community, Whole Child (WSCC) model to outline EOP policies and protocols across each component. Tools and resources from the U.S. Department of Education can be used by K-12 administrators to develop and update their EOP.

Vaccination Verification

Existing laws and regulations require certain vaccinations for children attending school. K-12 administrators regularly maintain documentation of people's immunization records. Administrators who maintain documentation of students' and workers' COVID-19 vaccination status can use this information, consistent with applicable laws and regulations, including those related to privacy, to inform prevention strategies, school-based testing, contact tracing efforts, and quarantine and isolation practices. Schools that plan to request voluntary submission of documentation of COVID-19 vaccination status should use the same standard protocols that are used to collect and secure other immunization or health status information from students. The protocol to collect, secure, use, and further disclose this information should comply with relevant statutory and regulatory requirements, including Family Educational Rights and Privacy Act (FERPA) statutory and regulatory requirements. Policies or practices related to providing or receiving proof of COVID-19 vaccination should comply with all relevant state, tribal, local, or territorial laws and regulations.

As part of their workplace COVID-19 vaccination policy, schools should recognize that a worker who cannot get vaccinated due to a disability (covered by the ADA), has a disability that affects their ability to have a full immune response to vaccination, or has a sincerely held religious belief or practice (covered by Title VII of the Civil Rights Act of 1964) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. Additionally, school employers should advise workers with weakened immune systems about the importance of talking to their healthcare professional about the need for continued personal protective measures after vaccination. For more information on what you should know about COVID-19 and the ADA, the Rehabilitation Act and other Equal Employment Opportunity Laws visit the [Equal Employment Opportunity Commission website](#).

Appendix 2: Testing Strategies for COVID-19 Prevention in K-12 Schools

Testing Benefits

School testing gives communities, schools, and families added assurance that schools can open and remain open safely for all students. By identifying infections early, testing helps keep COVID-19 transmission low and students in school for in-person learning, sports, and extracurricular activities. Screening testing is likely to be most feasible in larger settings and for older children and adolescents.

Collaboration between Education and Public Health

Before implementing COVID-19 testing in their schools, K-12 school leaders should coordinate with public health officials to develop a testing plan and build support from students, parents, teachers, and staff and must ensure that such screening testing is administered consistent with applicable law, including the Protection of Pupil Rights Amendment (PPRA). COVID-19 testing introduces challenges that schools may not have considered in the past (for example, requirements to perform on-site tests and to refer people for confirmatory testing), and public health officials can provide guidance on federal, state, and local requirements for implementing testing. Both school leaders and public health officials should assure the testing plan has key elements in place, including:

- Protocols for screening testing frequency based on community transmission rates, vaccination levels, and prevention strategies implemented at the school.
- Protocols for providing or referring to diagnostic testing for students, teachers, and staff who come to school with symptoms and for students, teachers, and staff following exposure to someone with COVID-19.
- Physical space to conduct testing safely and privately.
- Ability to maintain confidentiality of results and protect student, teacher, and staff privacy.
- Ways to obtain parental consent for minor students and assent/consent for students themselves.
- A mechanism to report all testing results, to the extent allowable by or consistent with applicable federal, state, or local laws and regulations, including privacy laws such as FERPA, as required by the state or local health department.
- Roles and responsibilities for contact tracing for each party, including identification of close contacts.

If these elements are not in place, schools may consider referring students, teachers, and staff to community-based testing sites [\[1\]](#).

Collaboration among local counsel, education, and public health is recommended to ensure appropriate consent is obtained and maintained and results are maintained, used, and further disclosed with appropriate privacy and confidentiality in accordance with the Americans with Disabilities Act (ADA) [\[2\]](#), the Family Educational Rights and Privacy Act (FERPA) [\[3\]](#), the Protection of Pupil Rights Amendment (PPRA) [\[4\]](#), and other applicable laws and regulations. School administrators who have questions about FERPA (or PPRA) may contact the Department of Education's Student Privacy Policy Office (SPPO) at <https://studentprivacy.ed.gov> [\[5\]](#).

Testing Strategies

Schools may consider testing a random sample of at least 10% of students who are not fully vaccinated or may conduct pooled testing for COVID-19. Random sampling can reduce costs and eliminate bias in the testing design but may require more logistics and planning. Pooled testing increases the number of people who can be tested at once and reduces testing resources used. Pooled testing works best when the number of positives is expected to be very low. Ideally, specimens should be pooled at the laboratory rather than in the classroom. If the pooled test result is positive, each of the samples in the pool will need to be tested individually to determine which samples are positive. This allows for faster isolation of cases and quarantine of close contacts.

More frequent testing may be needed for students, teachers, staff, and adult volunteers who are not fully vaccinated and engaged in school athletics and other extracurricular activities. Testing at least once per week is recommended for high-risk sports and extracurricular activities (those that cannot be done outdoors or with masks) at all community transmission levels. In areas of substantial-to-high community transmission levels, testing twice per week is recommended for participation in these activities. Additionally, if the school is not tracking COVID-19 vaccination status of participants and support teacher and staff screening testing should be encouraged.

Fully vaccinated students, teachers, and staff with no COVID-19 symptoms do not need to quarantine at home following an exposure to someone with COVID-19 but should get tested 3-5 days after exposure. In addition to wearing masks in school, they should wear a mask in other indoor public settings for 14 days or until they receive a negative test. People who have tested positive for COVID-19 within the past 3 months and recovered do not need to get tested following an exposure as long as they do not develop new symptoms. Any fully vaccinated person who experiences symptoms consistent with COVID-19 should isolate themselves from others, be clinically evaluated for COVID-19, and tested for SARS-CoV-2 if indicated.

People with COVID-19 have reported a wide range of symptoms from no or mild symptoms to severe illness. Symptoms may appear 2-14 days after exposure to the SARS-CoV-2 virus. Because some of the symptoms of flu, common cold, and COVID-19 are similar, it is hard to tell the difference between them based on symptoms alone. Testing can help confirm a diagnosis, and inform medical treatment and care. Also, testing will confirm the need to isolate from others for at least 10 days and quarantine close contacts.

Choosing a Test

When considering which tests to use for screening testing, schools or their testing partners should choose tests that can be reliably supplied and provide results within 24 hours. If available, saliva tests and nasal tests that use a short swab may be more easily implemented and accepted in schools. A viral test tells a person if they have a current infection. Two types of viral tests can be used: nucleic acid amplification tests (NAATs) and antigen tests. Frequency of testing should be determined by the performance characteristics of the test being used. The intended use of each test, available in the Instructions for Use and in the Letter of Authorization for each test, defines the population in which the test is intended to be used, the acceptable specimen types, and how the results should be used.

Reporting Results

Schools performing on-site tests (i.e., that are not sent to a laboratory) must apply for a Clinical Laboratory Improvement Amendments (CLIA) [☐](#) certificate of waiver, and report test results to the extent allowable by or consistent with applicable privacy laws to state or local public health departments and as may be mandated by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136 [📄](#) [☐](#)). Schools should work closely with their local health department when establishing on-site testing so that their performance of CLIA-waived or FDA-authorized point-of-care tests for SARS-CoV-2 is done in accordance with regulations and should work closely with local counsel to ensure the reporting of test results is done in accordance with applicable privacy laws and regulations.

Parents, guardians, and caregivers should be asked to report new diagnoses of COVID-19 to schools and public health authorities to facilitate contact tracing and communication planning for cases and outbreaks. In addition, school administrators should notify teachers, staff, families, and emergency contacts or legal guardians immediately of any case of COVID-19 while maintaining confidentiality in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA [☐](#)), the Americans with Disabilities Act (ADA [☐](#)), the Family Educational Rights and Privacy Act (FERPA [☐](#)) and other applicable laws and regulations. Notifications must be accessible for all students, teachers, and staff, including those with disabilities or limited English proficiency (for example, through use of interpreters or translated materials).

Ethical Considerations for School-Based Testing

- Testing should be conducted with informed consent from the person being tested (if an adult) or the person's parent or guardian (if a minor), consistent with applicable state laws related to consent. Informed consent requires disclosure, understanding, and free choice, and is necessary for teachers, staff (who are employees of a school) and students' families, to act independently and make choices according to their values, goals, and preferences.
- Consider distributing consent forms with the other paperwork for returning to school and making them easily accessible.
- Differences in position and authority (i.e., workplace hierarchies), as well as employment and educational status, can affect a person's ability to make free decisions. CDC provides guidance and information related to consent for COVID-19 testing among employees.
- The benefits of school-based testing need to be weighed against the costs, inconvenience, and feasibility of such programs to both schools and families. These challenges must be considered carefully and addressed as part of plans for school-based testing developed in collaboration with public health officials. The burden of testing is likely to be higher for younger children and therefore screening testing may be more feasible and acceptable for older children and adolescents.

Resources to Support School Screening Testing Programs

- CDC ELC Cooperative Agreement Reopening Schools Award [🔗](#) provides \$10 billion to support COVID-19 screening testing in schools for safe, in-person learning.
- COVID-19 Testing and Diagnostics Working Group | HHS.gov [🔗](#) develops testing-related guidance and provides tailored or focused investments to expand the available testing supply and maximize testing capacity.
- Increasing Community Access to Testing [🔗](#) provides COVID-19 testing resources and support to underserved school districts.
- Operation Expanded Testing expands national COVID-19 testing capacity and support for K-8 schools and groups at higher risk of COVID-19 through three regional hubs:
 - Northeast and South [🔗](#)
 - Midwest [🔗](#)
 - West [🔗](#)
- National Institutes of Health RADx Initiative [🔗](#) rapidly scales up testing across the country to enhance access to those most in need and provides a When to Test [🔗](#) impact calculator which illustrates how different mitigation strategies can minimize the spread of COVID-19.
- Shah Family Foundation Open and Safe Schools [🔗](#) toolkit provides school leaders resources and tools to implement COVID-19 screening testing.
- Rockefeller Foundation has created a playbook [🔗](#) with detailed, step-by-step guidance to help design and implement effective testing programs in schools. It addresses the operational challenges and everyday realities of implementing a complex, logistical program in an easy-to-understand, practical guide.
- The U.S. Department of Education's COVID-19 Resources for Schools, Students, and Families [🔗](#) provides up-to-date guidance and policies to support life-long learning while addressing challenges presented by COVID-19.

Last Updated Aug. 5, 2021



COVID-19

Science Brief: Transmission of SARS-CoV-2 in K-12 Schools and Early Care and Education Programs – Updated

Updated July 9, 2021

[Print](#)

Summary of Recent Changes

Updates as of July 9, 2021



- Modified the background to reflect the current state of the pandemic and to clarify that studies in the review pre-date the approval of vaccinations for adults and adolescent 12 years and older
- Condensed and updated information in section on COVID-19 in children and adolescents
- Added section on early care and education settings
- Added section on masking
- Added section on screening testing
- Added information on the updated CDC Guidance for COVID-19 Prevention in Kindergarten (K)-12 Schools and COVID-19 Guidance for Operating Early Care and Education/Child Care Programs

[View previous updates](#)

Background

Schools and early care and education (ECE) programs are an important part of the infrastructure of communities. They provide safe, supportive learning environments for children and adolescents and employ teachers and other staff.^{1,2} Schools and some ECE programs also provide critical services, including school meal programs and social, physical, behavioral, and mental health services.^{1,3} Schools and ECE programs have other benefits for the community, including enabling parents, guardians, and caregivers to work.^{1,2,4} In the spring of 2020, kindergarten to grade 12 (K-12) schools and many ECE programs in the United States closed for in-person instruction or care as a strategy to slow the spread of SARS-CoV-2, the virus that causes COVID-19. Reports suggest that the limited in-person instruction during the pandemic may have had a negative effect on learning for children⁵ and on the mental and emotional well-being of both parents and children.^{6,7} For schools and ECE programs, the benefits of in-person school and caregiving need to be balanced against the risk of acquiring and spreading SARS-CoV-2 in these settings.

Globally, K-12 schools and ECE programs used various, layered COVID-19 prevention strategies with in-person, hybrid, and virtual models of instruction and care during the 2020-2021 academic year. Their experiences have contributed to our knowledge of the nature of SARS-CoV-2 transmission in schools, ECE programs, and their surrounding communities.

Given the rapid developments of the pandemic response and the time needed to collect, analyze, and report new data, the studies in this updated science brief primarily describe experiences before widespread availability of COVID-19 vaccines. The availability of safe and effective vaccines for people ages 12 years and older and subsequent decreases in COVID-19 cases,

hospitalizations, and deaths mark progress against COVID-19.⁸ Increasing COVID-19 vaccination rates will likely affect patterns of transmission in schools and communities. As of July 4, 2021, approximately 55% of those 12 years and older in the United States were fully vaccinated.⁸

In addition, the studies in this review describe school operations when multiple, layered prevention strategies were in use including universal masking policies, limited class sizes, and cohorting. The studies are also not limited to experiences in the United States and do not account for new variants of the virus. This context is important to consider when reviewing this summarized science.

Many state, tribal, local, and territorial agencies are planning to or already have reduced prevention strategies, such as physical distancing and masking, for community settings including schools. Therefore, the 2021-2022 school year will not be directly comparable to the 2020-2021 school year. Evaluation and sharing of the 2021-2022 experiences will be needed to understand SARS-CoV-2 transmission risk in this new stage of the pandemic and to add to the science on this topic.

Regardless, it has been established, as described by the evidence in this document, that layered COVID-19 prevention strategies help to prevent SARS-CoV-2 transmission.

Transmission of SARS-CoV-2 in schools and ECE programs depends on the local transmission rates; the types of variants circulating; the epidemiology of COVID-19 among children, adolescents, and staff; vaccine coverage for those eligible; and mitigation measures in place to prevent transmission.

COVID-19 among children and adolescents

Children and adolescents can be infected with SARS-CoV-2, can get sick with COVID-19, and can spread the virus to others.⁹⁻¹⁵ In the United States through March 2021, the estimated cumulative rates of SARS-CoV-2 infection and COVID-19 symptomatic illness in children ages 5-17 years were comparable to infection and symptomatic illness rates in adults ages 18-49 and higher than rates in adults ages 50 and older.¹⁶ Estimated cumulative rates of infection and symptomatic illness in children ages 0-4 years are roughly half of those in children ages 5-17 years, but are comparable to those in adults ages 65 years or older. These cumulative rates were estimated from CDC models that account for under-detection among reported cases.¹⁷

Several studies conducted early during the COVID-19 pandemic suggested that the incidence rate among children and adolescents was lower than among adults.^{9, 10, 18-23} However, the lower incidence rates may have been due in part to children, when compared to adults, having fewer opportunities for exposure (due to school, daycare, and activity closures) and a lower probability of being tested.¹⁷ Studies that have systematically tested children and adolescents, irrespective of symptoms, for acute SARS-CoV-2 infection (using antigen or RT-PCR assays) or prior infection (through antibody testing) have found their rates of infection can be comparable, and in some settings higher, than in adults.^{12, 15, 24-29}

Children and adolescents can also transmit SARS-CoV-2 infection to others. Early during the COVID-19 pandemic, children were not commonly identified as index cases in household or other clusters^{9, 10} largely because schools and extracurricular activities around the world were closed or no longer held in-person. However, outbreaks among adolescents attending camps, sports events, and schools have demonstrated that adolescents can transmit SARS-CoV-2 to others.^{11, 14, 30}

Furthermore, transmission studies that have examined secondary infection risk from children and adolescents to household contacts who are rapidly, frequently, and systematically tested demonstrate that transmission does occur.^{29, 31}

Compared with adults, children and adolescents who are infected with SARS-CoV-2 are more commonly asymptomatic (never develop symptoms) or have mild, non-specific symptoms (e.g. headache, sore throat).³²⁻³⁶ Similar to adults with SARS-CoV-2 infections, children and adolescents can spread SARS-CoV-2 to others when they do not have symptoms or have mild, non-specific symptoms and thus might not know that they are infected and infectious. Children are less likely to develop severe illness or die from COVID-19.^{23, 37-39} Nonetheless, 271 COVID-19 deaths among persons ages 5-17 years and 120 deaths among those 0-4 years have been reported to the National Center for Health Statistics through July 7, 2021.⁸ The extent to which children suffer long-term consequences of COVID-19 is still unknown.⁴⁰ Although rates of severe outcomes (e.g. hospitalization, mortality) from COVID-19 among children and adolescents are low,^{41, 42} youth who belong to some racial and ethnic minority groups are disproportionately affected similar to adults. For example, a higher proportion of COVID-19 cases in school-aged children who are Hispanic or Latino or are Black or African American were hospitalized or required intensive care unit (ICU) admission than reported among White school-aged children.⁴¹ Underlying medical conditions are also more commonly reported among children who are hospitalized or admitted to an ICU than those not.^{41, 43} CDC's COVID Data Tracker provides up-to-date information on Demographic Trends of COVID-19 cases and deaths in the US reported to CDC.

The evidence that children and adolescents can be infected with, get sick from, and transmit SARS-CoV-2 continues to evolve. As with the studies from early during the COVID-19 pandemic, the quality and comparability of reported studies is affected by the study design, the method used to detect SARS-CoV-2 infection, the prevention measures in place during the study period, and the background rate of infection in the community.^{33, 44, 45} The introduction of new variants of the virus into the population likely will further affect the evolving epidemiology and interpretation of future studies as will understanding how transmission varies by the age of the child. COVID-19 vaccination of adults and adolescents could also impact the incidence of COVID-19 in the United States, as young children will comprise a greater proportion of the population who are unvaccinated and therefore at risk.

Schools and SARS-CoV-2 transmission

National COVID-19 case incidence rates among children and adolescents increased during fall 2020 until about mid-January 2021 and then declined, paralleling trends observed among adults.⁸ Neither increases in case incidence among school-aged children nor school reopenings for in-person learning appear to pre-date increases in community transmission.^{42, 46-48}

Schools should consider levels of community transmission as they assess the risk of transmission within their school.⁴⁶ If community transmission is high and community vaccination level is low, students and staff are more likely to come to school while infectious, and introduce SARS-CoV-2 into the schools.

A study comparing COVID-19 hospitalizations between counties with in-person learning and those without in-person learning found no effect of in-person school reopening on COVID-19 hospitalization rates when baseline county hospitalization rates were low or moderate.⁴⁹ The association between COVID-19 incidence, the transmission of the virus in school settings, and levels of community transmission underscores the importance of controlling disease spread in the community to protect teachers, staff, and students in schools.⁴⁶

Some outbreaks have occurred in schools, leading to closures.^{50, 51} Significant secondary transmission of SARS-CoV-2 infection has occurred in school settings when prevention strategies are not implemented or are not followed.⁵⁰ In Israel, prior to vaccine introduction, a school was closed less than two weeks after reopening when two symptomatic students attended in-person learning, leading to 153 infections among students and 25 among staff members, from among 1,161 students and 151 staff members that were tested.⁵⁰ Importantly, prevention strategies were not adhered to – including lifting of a mask requirement because of a heat wave, classroom crowding, and poor ventilation.

Although outbreaks in schools can occur, multiple studies have shown that transmission within school settings is typically lower than – or at least similar to – levels of community transmission, when prevention strategies are in place in schools. Findings from these studies include:

- National surveillance data from the United Kingdom (UK) showed an association between regional COVID-19 incidence and incidence in schools. For every five additional cases per 100,000 population in regional incidence, the risk of a school outbreak increased by 72%.⁴⁶
- Few cases in Australian schools were reported when community transmission levels were low, and cases in schools increased when community transmission increased.²
- In Michigan and Washington state, delivery of in-person instruction was not associated with increased spread of SARS-CoV-2 in schools when community transmission was low, but cases in schools did increase at moderate-to-high levels of community transmission.⁵² When community transmission was low, there was no association between in-person learning and community spread.⁵²
- A combined cross-sectional and cohort study in Italy between September 2020 and February 2021 found that reopening schools for in-person learning did not contribute to the second wave of SARS-CoV-2 infections.⁴⁷

SARS-CoV-2 transmission in schools among students, families, teachers, and school staff

With approximately one quarter of teachers at higher risk of serious consequences of COVID-19 because of their underlying medical conditions,⁵³ reasonable concerns have been raised about the occupational risk of SARS-CoV-2 infection for teachers and school staff. Evidence from studies primarily done before vaccine approval for those 12 years of age and older suggests that staff-to-staff transmission is more common than transmission from students to staff, staff to student, or student to student.^{46, 50, 54} For example, in the large UK study, most outbreak cases were associated with an index case (initial case) in a staff member.⁴⁶ Therefore, school interventions should include prevention strategies to reduce the transmission potential of

staff members. Detection of cases in schools does not necessarily mean that transmission occurred in schools. The majority of cases that are acquired in the community and are brought into a school setting result in limited spread inside schools when multiple layered prevention strategies are in place.^{38, 55-57}

Findings from several studies suggest that SARS-CoV-2 transmission among students is relatively rare, particularly when prevention strategies are in place. An Australian study of 39 COVID-19 cases among 32 students and seven staff traced contacts across 28 schools and six early childhood centers and found only 33 secondary positive cases (28 students and five staff members) out of 3,439 close child contacts and 385 close staff contacts.^{58, 59} Several contact tracing studies have found limited student-to-student transmission in schools.^{47, 54, 60, 61} A study of factors associated with SARS-CoV-2 infection among children and adolescents in Mississippi found that school attendance was not associated with a positive SARS-CoV-2 test result. However, close contacts with persons with COVID-19, attending gatherings, and having visitors in the home were associated with SARS-CoV-2 infections among children and adolescents.²⁶ The evidence to date suggests that staff-to-student and student-to-student transmission are not the primary means of exposure to SARS-CoV-2 among infected children. Several studies have also concluded that students are not the primary sources of exposure to SARS-CoV-2 among adults in school setting.^{47, 54, 59}

There is some evidence to indicate that SARS-CoV-2 might spread more easily within high school settings than in elementary school settings.⁹ For example, researchers in Italy identified and tested nearly all (99.8%) contacts of 1,198 cases in school settings and reported a lower attack rate in elementary schools (one secondary case; 0.38% attack rate) than in middle and high schools (37 secondary cases; 6.46% attack rate).⁶² This pattern was consistent with findings from a study in New South Wales, Australia, that reported higher attack rates in high schools than in elementary/primary schools.⁵⁸ The apparent increased risk of SARS-CoV-2 transmission among adolescents may be in part attributable to more social interactions with non-household members outside schools.⁶³ Nonetheless, evidence for greater transmission in middle schools and high schools compared with elementary schools suggests that the former may need to move more quickly to virtual instruction when community transmission is high. Uptake of COVID-19 vaccines in adolescents will likely alter these transmission dynamics.

Transmission in the ECE setting

Although the data are more limited in ECE settings,^{58, 64-69} several findings are noteworthy. First, higher numbers of cases are observed when community rates are higher.^{66, 67} Second, children can acquire SARS-CoV-2 in ECE settings^{65, 70} and transmit it to household and non-household members.⁷⁰ Third, when prevention strategies are in place, secondary transmission appears uncommon.^{66, 67} Findings from some of these studies include:

- In a study of Rhode Island child care centers shortly after reopening between June 1, 2020 and July 31, 2020, 29 of 666 programs had one or more cases of COVID-19 among children or staff. However, only four had possible secondary transmission.⁶⁶ During this time period, licensed child care facilities were required to follow multiple prevention strategies including reduced enrollment, cohorting in the same group, masks for adults, and enhanced cleaning. Data from periodic inspections demonstrated high compliance with the strategies.
- In a study of licensed childcare centers in Washington, D.C., between July and December of 2020 that had multiple prevention strategies in place, a quarter of facilities reported at least one case. However, facility-associated outbreaks only occurred in 5.8% of facilities.⁶⁷ Risk factors for an outbreak in a facility included having been in operation less than three years, having people who are symptomatic in the facility who first sought testing three or more days after illness onset, or having people with asymptomatic infection present in the facility.
- Another study found that child care providers who worked in ECE facilities open during April and May 2020 were not more likely to get COVID-19 than those who did not work in ECE facilities during those two months, a finding suggesting that working in the ECE facilities did not increase their risk of infection.⁶⁸

Additional information on ECE programs can be found in CDC's COVID-19 Guidance for Operating Early Care and Education/Child Care Programs.

Prevention strategies and school in-person learning

CDC guidance identifies multiple prevention strategies that schools can implement in a layered approach to promote safer in-person learning and care. These include promoting vaccination, consistent and correct use of masks for people who are not fully vaccinated, physical distancing, screening testing in schools to promptly identify cases, improved ventilation,

handwashing and respiratory etiquette, staying home when sick and getting tested, contact tracing in combination with isolation and quarantine, and routine cleaning with disinfection under certain conditions.

When prevention strategies are consistently and correctly used, the risk of SARS-CoV-2 transmission in the school environment is decreased.⁷¹ Use of multiple strategies – also called layered prevention – provides greater protection in breaking transmission chains than implementing a single strategy.⁷² CDC guidance recommends layering multiple prevention strategies, especially in areas with moderate to high community transmission, low vaccination rates, and for people who are not fully vaccinated.

Studies of SARS-CoV-2 transmission in schools that consistently implemented layered prevention strategies have shown success in limiting transmission in schools, even when testing of close contacts has been incomplete.^{38, 46, 49, 73-77} For example:

- A study of 11 school districts in North Carolina with in-person learning for at least nine weeks during the fall 2020 semester reported minimal school-related transmission even while community transmission was high.³⁸ These schools implemented and strictly adhered to multiple prevention strategies, including universal mask use and physical distancing. Breaches in mask use likely explained the few instances of in-school spread of SARS-CoV-2.
- A study of elementary schools in Utah who implemented layered prevention strategies, such as mask wearing and cohorting, found very low transmission (secondary attack rate 0.7%) in December 2020-January 2021.⁷⁴
- In a study of K-12 schools in St. Louis with multiple layered prevention strategies in place, only 2% of contacts of COVID-19 cases in the schools tested positive for the virus; this was despite high community transmission rates.⁷⁶
- A study of Italian schools, which implemented a comprehensive prevention approach that included masking, distancing, cleaning, increased ventilation, and cancellation of extracurricular activities, found that school reopening was not associated with the second wave of COVID-19 in Italy.⁴⁷
- Similarly, a surveillance study of symptomatic and asymptomatic cases among children in Swiss schools found limited secondary transmission when multiple protective measures were used in schools,⁵⁶ including mask use, physical distancing, and other interventions.
- Data from surveillance of German school outbreaks detected outbreaks before any prevention strategies were implemented. After schools reopened with prevention strategies in place, the average number of outbreaks per week after the reopening (2.2) was smaller than before the school closed earlier in the pandemic (3.3), suggesting that prevention strategies had some protective effect.⁵¹
- A study of private schools that reopened for in-person instruction in Chicago with the implementation of layered prevention strategies found minimal in-school transmission.⁵⁷

When a combination of effective prevention strategies is implemented and strictly adhered to in the K-12 in-person learning environment, the risk of transmission in the school setting appears to be lower than or equivalent to the transmission risk in other community settings.⁴⁷

Specific strategies

CDC guidance includes multiple strategies that schools can use to reduce the risk of COVID-19 transmission. Many of these are broadly applicable for the prevention of infectious disease (e.g., hand hygiene and improved ventilation [including air cleaning]). This section focuses on three strategies that schools and ECE programs might specifically implement for COVID-19 prevention.

Mask use

Consistent and correct use of face masks reduces the spread of SARS-CoV-2⁷⁸ and, with some exceptions, is recommended for use indoors among people aged 2 and older who are not fully vaccinated. In general, people do not need to wear masks when outdoors. However, particularly in areas of substantial to high transmission, CDC recommends that people who are not fully vaccinated wear a mask in crowded outdoor settings or during activities that involve sustained close contact with other people who are not fully vaccinated. Masks work through the combination of source control and protection for the mask wearer. Most studies that have shown success in limiting transmission in schools have required that staff only or staff and students wear masks as one of the school's prevention strategies.^{38, 47, 57, 66, 67, 75} Inconsistent mask use may have contributed to school-based outbreaks.^{50, 79}

Physical distancing

Physical distancing is a recommended prevention strategy in schools and other settings. In many settings, physical distancing has been defined as at least 6 feet. This recommendation was based on historical studies of other contagious diseases such as SARS-CoV-1 in a hospital setting.⁸⁰ However, emerging international and United States evidence suggests layering of other prevention strategies is effective at reducing SARS-CoV-2 transmission risk even with physical distances of less than 6 feet between students in classrooms.

Several studies from international settings published in the fall of 2020 reported low levels of transmission with one meter (approximately 3.28 feet) between students in schools – consistent with the 1-meter recommendation for physical distancing of students from the World Health Organization (WHO).⁸¹ A summary of findings from these studies is described below.

- K-5 schools in Norway had minimal child-to-child and child-to-adult transmission with masks only required for adults one meter between all individuals, and two meters between student cohorts (a cohort is a distinct group that stays together throughout the entire school day during in-person learning, or over the course of any pre-determined period of time, so that there is minimal or no interaction between groups).⁷³
- Studies from Switzerland,⁵⁶ Australia,⁵⁹ Italy,⁴⁷ the U.K.,⁴⁶ and Germany^{51, 61} similarly found limited transmission for K-12 schools, using 1-meter distance between individuals (students, teachers, and staff).
- An outbreak investigation in an Israeli school among students in grades 7-12 highlighted the importance of multiple prevention measures, especially when physical distance cannot be achieved. In this case, already increased transmission risk from classroom crowding (35–38 students per class) and reduced distancing (1-1.3 m²) was likely increased more by reduced ventilation (conditioned indoor air was recirculated) and an exemption from mask requirements due to a heat wave.⁵⁰

Several United States studies also showed low transmission among students in schools even when student physical distancing is less than 6 feet, but other prevention strategies are in place. For example:

- A North Carolina study³⁸ found low transmission in schools and no instances of child-to-adult transmission of SARS-CoV-2 during a time when community transmission was high. Students were required to wear masks, and the schools implemented routine handwashing, daily symptom monitoring and temperature checks, contact tracing, and 14-day quarantine for close contacts. Although this study did not report the specific distances maintained between students, verbal reports from school officials indicated that in participating districts, students were placed less than 6 feet apart in classrooms.
- A study of the 94 pre-K-12 schools in the Chicago Archdiocese, the largest private school system in the United States, reported that the attack rate for students and staff participating in in-person learning was lower than the rate for the community overall: 0.2% among these students compared to 0.4% among all Chicago children.⁵⁷ The COVID-19 reopening guidelines for the Chicago Archdiocese schools required 6 feet between cohorts but not for students within cohorts, as well as masking, hand hygiene, cleaning and disinfection, daily symptom monitoring, contact tracing, and 14-day quarantine for close contacts of a case.⁸²
- A study of 17 rural Wisconsin K-12 schools that were using full in-person instruction found only seven cases among students that were linked to in-school spread; the study noted limited spread among children in cohorts and observed no documented transmission to or from staff members.⁵⁵ These Wisconsin schools required mask use (92% observed compliance), placed students less than 6 feet apart in classrooms, and used cohorting at a time of high community transmission.
- A study of 20 K-6 schools in Utah at a time of high community transmission (>100 cases per 100,000 persons in the past seven days) found low in-school transmission (secondary attack rate of 0.7%) with mask requirements, a median of 3 feet between students, and use of cohorting.⁷⁴
- A statewide analysis of Florida K-12 schools, where not all schools had mask requirements or physical distancing requirements between desks, also found low rates of school-associated transmission. Resumption of in-person education was not associated with a proportionate increase in COVID-19 among school-aged children.⁸³ Higher rates among students were observed in districts without mandatory mask-use policies and those with a higher proportion of students attending in-person learning. These findings provide further evidence for the effectiveness of universal masking, especially when physical distancing cannot be achieved.⁸³
- A study of 58 K-12 schools conducting full in-person instruction in Missouri, where mask use was required and 73% of schools used distances of 3-6 feet between students, found that secondary transmission was rare.⁷⁶
- A large evaluation of nine school districts in Ohio at a time of high community transmission found limited in-school transmission. Children who had in-school exposure to a student who was infected had rates of COVID-19 similar to

those of children with no known exposure in school.⁸⁴ This evaluation included K-12 schools that were using full in-person instruction and others that were using hybrid instruction; 12 schools used 3-5 feet of distance, while 17 used 6 feet. Because findings were not stratified by learning mode or distancing, it was not possible to determine the differential effects of these two factors.

- In a report using data from Michigan and Washington state, in-person schooling was not associated with increased spread of SARS-CoV-2 among students at schools located in areas with low or moderate levels of community transmission.⁵² At the time, schools varied in how they held classes (full in-person, hybrid, and virtual). In Michigan, 6 feet of distance was recommended but not required, and in Washington, the recommended distance varied over time. The combination of learning modes and distancing definitions in this analysis did not allow investigators to draw conclusions about the effectiveness of 6 feet or shorter distances in terms limiting transmission in schools.

In summary, the preponderance of the available evidence from United States schools indicates that even when students were placed less than 6 feet apart in classrooms, there was limited SARS-CoV-2 transmission when other layered prevention strategies were consistently maintained; notably, masking and student cohorts.^{34, 55, 74, 85} International studies further support these conclusions.^{46, 47, 51, 73} However, greater physical distancing (at least 6 feet) between people who are not fully vaccinated should be prioritized whenever masks cannot be used (for example, while eating indoors).

Consistent with recommendations from WHO⁸¹ and the American Academy of Pediatrics,⁸⁶ using a distance of at least 3 feet between students in classrooms could provide a feasible definition of physical distancing so long as other prevention strategies are maximized. These include mask requirements for children aged 2 years and older, adolescents, and staff who are not fully vaccinated, ensuring good ventilation that includes air cleaning, frequent hand hygiene, and encouraging children, adolescents, and staff to stay home when they have symptoms of COVID-19 or, for those not fully vaccinated, when they have been in close contact with someone who has known or suspected COVID-19.

There are insufficient data on the optimal distance recommended in ECE settings to reduce transmission risk, and feasibility of distancing between children and adults remains an issue.

Screening testing in K-12 schools

Screening testing is intended to identify persons who are infected but without symptoms (or before development of symptoms) who may be contagious so that measures can be taken to prevent further transmission. This can be used as a prevention strategy in schools.

Because many children with COVID-19 are asymptomatic, their infections may be difficult to detect without regular testing.⁸⁷ Several factors influence the yield of screening testing programs, including the accuracy of the test (sensitivity and specificity) and the prevalence of the infectious disease.⁸⁸ As previously stated, community transmission is correlated with the introduction of SARS-CoV-2 in the school. Depending on the characteristics of selected SARS-CoV-2 tests, conducting screening testing when community incidence is low is likely to result in identifying more false positives than true cases. Currently, CDC recommends that screening testing in schools be offered at least weekly for students who are not fully vaccinated in communities with moderate, substantial, or high transmission and for teachers and staff who are not fully vaccinated regardless of the levels of community transmission of SARS-CoV-2.

School-based screening testing programs may be particularly useful when other prevention strategies are not in place. In a modeling study that examined the effect of different prevention strategies on COVID-19 rates once a case was introduced into the school, weekly screening testing was projected to reduce secondary cases by a large extent in both elementary and high schools. Screening testing was estimated to be most effective in settings where other prevention strategies such as physical distancing and wearing masks were used less.⁸⁷

In the field, screening testing programs have often been implemented along with other prevention strategies.^{69, 75, 89} Screening testing programs have allowed some schools to identify and isolate students with asymptomatic infections and to address potential deficiencies in mitigation protocols, both of which can help reduce transmission of SARS-CoV-2.^{69, 75, 89, 90} One study found that among five programs with regular screening testing (at least weekly) of most students and staff in the fall of 2020, one-third to two-thirds of total COVID-19 cases identified in the schools were identified through screening.⁹⁰ Being able to reassure parents and staff about the safety of in-person learning is one reported benefit of screening testing programs.⁹⁰ However, schools with screening testing programs also identify barriers such as privacy concerns, operational complexity, and financial concerns.^{89, 90}

Sports and other extracurricular activities

Team sports or other types of group extracurricular activities can increase the risk of SARS-CoV-2 transmission for participants, coaches, and spectators^{11, 91-93} as well as among other students, teachers, and staff.^{11, 94, 95} Close contact team sports and indoor sports such as wrestling appear to represent particularly high-risk activities, because participants cannot maintain distance from others and ventilation options may be limited.^{11, 93} Intense exercise causes participants to breathe heavily, which can cause potentially infected respiratory droplets to travel further than they would from persons upon exhaling at rest.⁹⁶ Other extracurricular activities, especially ones that occur indoors and involve shouting or singing, also increase the risk of transmission if a participant is infectious, because respiratory droplets may be generated at higher rates and potentially travel greater distances.^{97, 98} For these reasons, strategies to control SARS-CoV-2 transmission in schools and ECE programs should take into account the role of sports and extracurricular activities that might be higher risk in increasing transmission. Differences in transmission dynamics for these activities compared with in-person instruction should also be considered. Relocation of activities to outdoors or other well-ventilated venues, as well as vaccination of eligible students and adults who support these activities (such as coaches, volunteers, teacher advisors), will be important contributors to reducing the risk of COVID-19 for those who play sports or engage in higher risk extracurricular activities.

Conclusions

SARS-CoV-2 transmission in the community is correlated with the amount of infections in schools. When community rates of COVID-19 are high, there is an increased likelihood that SARS-CoV-2 will be introduced to, and potentially transmitted within, a school or ECE setting.

Evidence to date suggests that when prevention strategies are layered and implemented with fidelity, transmission within schools and ECE programs can be limited. Information on transmission patterns following the uptake of COVID-19 vaccines and the experiences of schools as they use different mixes of effective prevention strategies to address COVID-19 will help refine guidance.

Reducing SARS-CoV-2 transmission in schools and ECE programs is a shared responsibility. Schools and ECE programs can limit transmission by layering the following effective prevention strategies:

- Promoting COVID-19 vaccination for those eligible
- Consistent and correct use of masks by people who are not fully vaccinated
- Physical distancing among people who are not fully vaccinated
- Screening testing in K-12 schools
- Improving ventilation
- Handwashing and respiratory etiquette
- Staying home when sick and getting tested
- Testing and contact tracing in combination with isolation and quarantine
- Routine cleaning with disinfection under certain conditions.

Implementing these strategies is particularly important in areas with moderate, substantial, or high transmission rates and low vaccination coverage, and to protect people who are not fully vaccinated. CDC has developed guidance that administrators in K-12 schools and ECE programs can use to help protect students, teachers, and staff; slow the spread of SARS-CoV-2; and support in-person learning and care.


Previous Updates

As of March 19









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- Added a section on physical distancing in schools that includes a summary of evidence on physical distancing and updated references and citations.


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